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LAW REPORT.

—509—

Supreme Court.

CALCUTTA, MONDAY, APRIL 8, 1822.

CROWN SIDE—THE KING *v. JOHN HAYES, Esq. JUDGE AND MAGISTRATE OF ZILLAH TIPPERAH.*

Before the Honorable Sir FRANCIS MACNAGHTEN.

Counsel for the Prosecution.

ROBERT CUTLAR FERGUSON, ESQ.

GEORGE MONEY, ESQ. COMPANY'S STANDING COUNSEL.

Counsel for the Defendant, R. SPANKIE ESQ. ADVOCATE GENERAL.

ARCHIBALD DUFF, Esq. Attorney for the Prosecution.

WILLIAM HUNTER SMOULT, Esq. Attorney for the Defendant.

Sometime after his Lordship had taken his seat on the Bench Mr. Hayes entered the Court, supported by Samuel Swinton Esq. President of the Marine Board on one hand, and John Palmer Esq. Merchant in Calcutta on the other, and took his station at the Bar. The following persons were empanelled on the Jury.

1 GEORGE FOWLER, Foreman.	7 THOMAS GABRIEL GUNTER
2 GEORGE HENRY CARTER	8 JOHN MILLER
3 GEORGE WILSON	9 CHARLES GAILLARD
4 JOHN RICHARDSON CAMP	10 JAMES HARTLEY
5 JAMES DUN	11 MARSHALL COLLIER
6 PATRICK BAYLE	12 WILLIAM REED

The Clerk of the Crown read the Indictment, after which the case was stated to the Jury by the Junior Counsel.

Mr. MONEY—May it please your Lordship—Gentlemen, of the Jury, The charge contained in the Indictment is, That on the 30th day of July, 1821, at Comillah in the Zillah of Tipperah, John Hayes did feloniously make an assault upon one Purtan Naray Doss, and with a certain rattan did give and strike him a great many violent blows and strokes in and upon the back and loins. That the said John Hayes, on the said 30th day of July last, did feloniously imprison the said Purtan Naray Doss in the common Jail, and kept him there till the time of his death. That when the said John Hayes so assaulted and struck the said Purtan Naray Doss, and also at the time when he imprisoned him, the said Purtan Naray Doss was sick and weak in body, and that the said John Hayes well knew the same. That during such imprisonment the said wounds and bruises mortified, and became and were putrid, and the said John Hayes did not nor would suffer or permit the said Purtan Naray Doss, to have proper medical or surgical aid or the necessaries required for the caring and healing of him, although the said John Hayes could and might then and there have procured and afforded such medical and surgical aid and such necessaries. That in consequence of the said wounds, imprisonment, want of medical aid and necessities in the said Common Jail, where the said Purtan Naray languished from the 30th of July until the 2d of August,—he then and there died on the said 2d of August. The Indictment consists of 7 Counts: The 2d Count, not stating the imprisonment to have been in the Common Jail, nor in the custody of Mr. Hayes, nor that he was weak in body from illness before the beating. The 3d Count, not stating want of necessities or medical aid. The 4th Count, omitting the imprisonment altogether, and stating the deceased to have been weak and ill before the beating. The 5th Count, not stating the deceased to have been ill, and stating wounds to have been inflicted. The 6th Count, charging that John Hayes in conjunction with a person or persons unknown, committed the said murder, as principal in the second degree, the said Purtan Naray being then sick and ill. The 7th Count, charging him with aiding and abetting, not stating the deceased to have been ill and sick.

Mr. FERGUSON—May it please your Lordship—Gentlemen of the Jury, You will easily conceive that I have a most painful task to perform in addressing you in this case; such a task as never fell to my

lot before, since I have been at the bar. I sincerely hope the Prisoner may be proved innocent of the crime laid to his charge; and although the duty of an Advocate is cast upon me, although it is my duty to make the most of the case, and the Prisoner will have the benefit of my Learned Friend's abilities and legal knowledge, yet I will abstain from uttering any thing that might inflame your minds, or aggravate the heavy charges against him. I will state the case as laid down in my brief, strictly conforming myself to the facts there set forth, and offered to be proved, of the truth or falsehood of which I know nothing; that is matter for your consideration and judgement, not mine. Having stated the case, I will lay down what appears to me to be the law as applicable to it—subject to the correction of the Bench, which will set me right should I fall into any error. I will lay down no law that I do not know to be sanctioned by the best criminal lawyers; rather than venture any opinion of my own.

Mr. Hayes held the high office of Judge and Magistrate of the Zillah of Tipperah, where the crime charged in the Indictment was committed. But it is not for doing his duty as a Judge that he stands before you to-day; it is for an act not connected and quite inconsistent with his duty that he is brought before you. The deceased Purtan Naray Doss was a Zumeendar of the same Zillah, a man of respectability and opulence, and had been by Mr. Hayes's order brought to the Cutcherry which was at Comillah about six months before, on some charge or other that had been preferred against him to the Judge. There he was detained from February till the July following, without being allowed once to visit his family. I do not blame Mr. Hayes for this; such a detention might have been necessary for the investigation of some important and intricate cause that was before him, which he will no doubt be able to explain in his defence. But the fact is that the deceased was so detained. Sometime in July Mr. Hayes went away for the purpose as I understand of investing a Rajah * at some distance, and Purtan Naray Doss thought there would be no great crime in going to his own family dwelling, especially as his son was then labouring under a mortal disease. He accordingly in these circumstances paid a visit to his family, but he returned to Comillah before Mr. Hayes did, and was consequently in attendance and ready to meet him. Some informer however it appears had given Mr. Hayes notice of the departure of this Zumeendar during his absence. Now I do not say this was not an offence; but surely it was not a very great crime, and did not call for severe chastisement. I should have told you that during the time he was at his house, he had witnessed the death of his son who had fallen a victim to a dreadful disease. Two days after his return, afflicted by this loss, he was sent for from his quarters by Mr. Hayes, who had then also arrived. And there is one thing which proves the assault made upon him to have been a most premeditated and deliberate act. The Whipping Post (an appendage of the Cutcherry) was that very morning ordered by Mr. Hayes to be removed from the front, where it usually stood, to the back. And I must here observe, that the punishment so inflicted is quite inconsistent with every law, as well as with the Government Regulations, and therefore he cannot shelter himself behind his character of a JUDGE, as he is not ignorant, it is to be supposed, of those laws and regulations, according to which it is his duty to dispense justice to the persons subjected to his authority. Mr. Hayes, when this Zumeendar was dragged before him, began to revile him, called him a "Burra Hurmuzaduh," or applied to him some such opprobrious term, and immediately ordered him to be tied up and receive 20 blows of the rattan. The unfortunate man threw himself at the feet of the judge; and humbly represented to him that he had committed no great crime in visiting his family; that he might fine him if it were deemed an unpardonable offence; but implored him not to disgrace him and his family by making him undergo this ignominious punishment—under which he must certainly die, now when he was weighed down with grief for his dead son. Mr. Hayes did not deign to listen to his entreaties, but applying to him abusive language ordered the 20 blows of the rattan to be inflicted with the utmost strength of the Executioner. After receiving 10 blows, the unfortunate man sunk to the ground in a swooning state, some of the ropes with which he was bound having given way: and, which is a

* Gungadur Manick at Augurtoollah.

material aggravation of the case, that will not be forgotten, Mr. Hayes ordered him to be again tied up, and thus inflicted the rest of the sentence. Having done this, he caused him to be dragged to the Common Jail, and shut him up among the common herd of prisoners, confined there for the most disgraceful crimes.

Another part of the case is the treatment of the deceased in Jail. I say that it was Mr. Hayes's duty, as a Judge, to see that he received proper treatment, and that the proper means had been used to recover him from his wounds. But it appears that he received no attendance, and no medical aid at all. There was a Surgeon at the place, who might have been called to view the wounds; but not even a Native Doctor was allowed. I know it will be sworn, and has been already sworn, on the Inquest, by the Native Doctor of the place, that he did administer what he thought necessary; but his fellow-prisoners in that miserable place, who will be called before you, will swear that he received no care whatever, except that some cold water was by them thrown over his wounds. It is for you to consider how far the Bengalee Doctor may be under the influence of Mr. Hayes, and whether you will rely on his statement or the evidence for the prosecution. In this situation the unfortunate man remained, lying chiefly on his face, without any care, but having had cold water poured over his back, until the night of the 2d of August when he died. I do not wish to have the benefit of a reply, although I am entitled to it, and I shall not reply unless there be something which very much calls for it; and I therefore wish to anticipate what may be advanced on the other side. These witnesses I understand will swear that he died of the Cholera Mortis, which indeed, now that this disease has become so common, may in a vague way of speaking be said to be the death of any one who dies suddenly. But my witnesses swear to facts quite inconsistent with this:—had he died of that disease there can be no doubt the persons about him must have known it. His fellow-prisoners swear that he did not. The witnesses on the other side will swear to the state of the bedding &c. which would make it be inferred that he did die of that disease: my witnesses swear that no such marks were visible. However, in this situation, sometime during the night of the 2d of August, the unfortunate Purtanb Narayn died in the Jail. And here, Gentleman, I beg to remind you that you must receive all I have been telling you not as my statement, but as the information that has been given to me. I can form no opinion on the subject; it is for you to decide what is true and what is not, according to the evidence that shall come before you.

I now come to the burning of the body. A request was made to Mr. Hayes by the friends of the deceased, to be allowed to carry the corpse to his family, as he had a son and a nephew alive, that they might perform to it those ceremonies which according to the prejudices of the Hindoo Religion (if prejudices they be) are not only proper but absolute necessary to the person's welfare in a future life;—but their request was refused. Mr. Hayes was personally applied to, but he refused to allow it to be carried even to the village; and said that if they wanted to burn it they might burn it where it was. I understand he had an Inquest held on the body, and they made a Report; but the persons who composed the Inquest were all dependents of Mr. Hayes, and whatever their report might be as to the cause of his death, a Native Inquest will go for nothing; and this would go for nothing. I have omitted to state that while the unfortunate man remained in Jail during the three days before his death, Mr. Hayes denied his relations and servants permission to attend him, and in consequence he received no attendance of any kind when in custody.

Now, Gentlemen, I have stated the whole of this case, and if it be made out, it is one of the gravest that ever came before a Jury. If the circumstances of the case be proved to be such as they have been stated, there can be no doubt but the deceased must have died in consequence of the beating. His back is stated to have become swollen; and as nothing was applied to assuage this, in consequence of the person being confined and cut off from all friendly or medical aid, mortification appears to have followed, and this being aggravated by the want of proper care and nourishment, death ensued. If no other adequate cause is shown, the impression must be that his death resulted from that. And if you are forced to come to the conclusion that he came by his death from these causes, it will be for you to say of what species of homicide Mr. Hayes has been guilty; for all the acts, the beating, the imprisonment, the bad treatment in Jail, were his, or which is the same thing done by his order. You may dismiss from your minds all consideration of those shades of homicide that are called justifiable. It cannot be justifiable, since it was done knowingly and deliberately, not in the performance of any lawful act, and the punishment was inflicted not for that species of offence for which a man should be so punished. That it is homicide of a species far from justifiable and not common manslaughter, I will show by the recorded opinions of the highest authorities on the subject. Take no law from me; I refer you to these Oracles of the Law of England which the Bench itself must obey:

Lord Chief Justice Hale says, (PLATES OF THE CROWN, vol. I, p. 428.) "If a man give another a stroke which it may be, is not in itself

so mortal but that with good care he might be cured, yet if he die of this wound within the year and day, it is homicide or murder as the case is, and so it hath been always ruled.—But if the wound or hurt be not mortal, but with ill applications by the party or those about him of unwholesome salves or medicines the party dies, if it can clearly appear, that this medicine, and not the wound, was the cause of his death, it seems it is not homicide, but then that must appear clearly and certainly to be so.—But if a man receives a wound which is not in itself mortal, but either for want of helpful applications, or neglect thereof, it turns to a gangrene or a fever, and that gangrene or fever be the immediate cause of his death, yet this is murder or manslaughter in him that gave the stroke or wound; for that wound, though it were not the immediate cause of his death, yet if it were the immediate cause thereof, and the fever or gangrene were the immediate cause of his death; yet the wound was the cause of the gangrene or fever, and so consequently is causa causati." So that in the present case, altho' the wounds inflicted in the first instance might not of themselves have proved mortal if properly attended to; yet if by the subsequent act of imprisonment he was actually deprived of medical aid or other necessary helps and comforts, and the wounds thus become mortal, it must in the that case be murder.

If it be true that the fell down during the infliction of the punishment, helpless and unable to endure this cruel treatment, and was again forcibly raised and lashed to the Whipping Post in that state, and thus received the remainder of that beating in consequence of which he died, it is a material aggravation of the case. Judge Foster says (in his SECOND DISCOURSE ON HOMICIDE, page 259:) "If A. intended to beat B. in anger or from preconceived malice, and death ensues, it will doubtless be no excuse that he did not intend all the mischief that followed: for what he did was malum in se, and he must be answerable for the consequence of it. He certainly beat him with an intention of doing him some bodily harm, he had no other intent and could have no other; he is therefore answerable for all the harm he did." Thus it is necessary that death should have been intended: I do not call upon you to believe that Mr. Hayes inflicted the punishment and then confined the unfortunate man in Jail with the intent to put an end to his days: this is by no means necessary: the injury may have been done, as you have heard, either through "anger or preconceived malice;" if from either, it is enough, both are not necessary. He again says (page 261.) "If an action unlawful in itself be done deliberately, and with intention of mischief or great bodily harm to particulars, or of mischief indiscriminately, fall it where it may, and death ensue against or beside the original intention of the party, it will be murder." If it be true that Mr. Hayes ordered the unfortunate man to be again fixed to the Post after he had fallen down in the helpless and pitiable situation already described, it cannot be doubted that he intended him great bodily harm,—to say no more.

Now, Gentlemen, it is for you to apply the law as laid down by these two great authors. You have first to consider whether or not he died of the wounds inflicted by the order of Mr. Hayes, and then take the law as it will be no doubt fairly and ably stated to you from the Bench, bearing in mind at the same time the doctrines laid down by the high authorities I have referred to. I shall be glad that after a full investigation of the subject, it appear to you that Mr. Hayes is not guilty; but if the facts I have stated to you are true—he guilty he must—and of the highest species of crime. It would give me a sincere pleasure if the Defendant were proved innocent, and I wish to God, Gentlemen, you may see the transaction in better light than I am able to do; but if it do appear on satisfactory evidence, that the man did die in consequence of the wounds unlawfully inflicted, and from the want of that medical assistance that was withheld, and from not being attended to and cherished as necessary in the helpless situation to which he was reduced, it is a solemn duty imposed upon you by the oath you have taken before God, to act according to the evidence that may come before you,—a duty you owe to all the inhabitants of this country, and to the Government under which they live, and to which they look up for justice and protection—to return a verdict of Guilty.

EVIDENCE FOR THE PROSECUTION.

HENRY THOBY PRINSEPP, Esq. SECRETARY TO GOVERNMENT.

Examined by Mr. Money.

Q. Do you know Mr. John Hayes, the Prisoner at the Bar?

A. I do.

Q. In what Service is he?

A. In the Civil Service of the Honourable East India Company,

Q. Do you know what countryman he is?

A. No.

Q. What situation does he hold under the Company?

A. He is Magistrate of Tipperah in the Province of Bengal.

Q. Was he so in the month of July 1821?

A. I believe so—Yes.

Q. Has he been long in that department of the Civil Service?

A. Yes; a very considerable period.

Q. Have you had any opportunity of knowing if he is well acquainted with the Company's Regulations?

A. I cannot speak positively as to that, from my own knowledge.

Q. How many years has he filled the situation of a Magistrate?

A. I think about 12 or 13 years; perhaps not so long—10 or 11.

Cross-examined by the Advocate General.

Q. Has Mr. Hayes during the time he has been in the Service, always conducted himself to the satisfaction of Government?

A. Yes, as far as I have heard.

Q. Has he not, as Judge and Magistrate, a Criminal Jurisdiction?

A. Yes, he holds the Foujdary Court of the Zillah.

Mr. FERGUSON. By the Bengal Regulations for 1793 (Reg. IX. s. 8.) the Magistrates are empowered to try persons for misdemeanors, and to punish them by fine and imprisonment; and they may inflict corporal punishment for petty thefts; but not for any thing they please.

The ADVOCATE GENERAL was of opinion, that besides exercising the Foujdary Jurisdiction, they might act as Justices of the Peace.

Re-examined by Mr. Money.

Q. Has Mr. Hayes a right to punish criminally?

A. I have never particularly studied the point.

Q. Do you think a person in Mr. Hayes's situation ought to regulate his conduct by the Regulations?

A. I think he may in some instances issue orders and do things not exactly expressed or defined in the Regulations.

Q. Is he not bound by the Regulations?

A. I am unable to offer an opinion; but I should thing not in every instance.

SAMUEL THOMAS GOAD, Esq. PUISNE JUDGE OF THE SUDDER DEWANIE AND NIZAMUT ADAWLUT.—Examined by Mr. Ferguson.

Q. You are a Judge of the Nizamut Adawlut?

A. Yes.

Q. Are you acquainted with Mr. Hayes?

A. Not personally.

Q. Do you think the Zillah Magistrates bound by the Regulations?

A. Yes; by the Oath they take when appointed to the office.

Mr. FERGUSON. I will produce the Oath:

Examination Continued.

Q. Has any Magistrate or Judge a right by the Regulations to punish a contempt or any other offence at discretion by the rattan?

A. He has not, in the Lower Provinces.

The ADVOCATE GENERAL objected to *vice versa* evidence being received as to the authority conferred on Magistrates in the Mofussil by the Government Regulations, as they would speak for themselves, and the Court was bound to notice them.

Sir F. MACNAGHTEN thought it was not necessary for the Prosecution to adduce any proof as to what were contained in the Regulations, as if the Defendant rested his defence on them, it was for him to adduce the passages on which he rested his justification.

Mr. FERGUSON. I am perfectly satisfied; my object is merely to save time; that we may not be under the necessity of reading over the whole Regulations.

Examination Continued.

Have the Zillah Magistrates power to punish by the rattan, for an affray or for any offence?

A. No; they have not.

Cross-examined by the Advocate General.

Q. Did you ever exercise the office of a Judge and Magistrate?

A. Yes; I did for a short time, many years ago.

Q. You were a considerable time at the Madras Presidency I believe, where the law is somewhat different?

A. Yes, I was.

By Mr. Ferguson.

Q. How long have you been in the Civil Service?

A. Above 25 years.

By the Advocate General.

Q. Have not Magistrates and Judges a judicial authority qua Magistrates?

A. They have.

By Mr. Ferguson.

Q. They have a judicial authority only as Magistrates?

A. Yes.

SUMNOO DOSS.—Examined by Mr. Money.

It was a Servant of the late Purturb Narayan Doss; know Mr. Hayes, was with my master at Tipperah at the time he died. I was with him when he was laid hold of and carried away from his quarters at Tipperah, from the place where he lived at Comilla; I don't recollect the date, it is a long while ago afterward, it is 3 or 4 months ago) died on the fourth day after, he was apprehended, I was with him about 8 o'clock in the morning in his quarters, he had bathed himself and was then preparing to go to the Cutcherry; there were other servants and people with him at the time,

and as he was preparing (after having bathed) to go to the Court two Chupprasses from the Judge appeared and took him away. They informed him that the Judge (Mr. Hayes) required his attendance. They took hold of him and pulled him along some distance, when we gave the Chupprasses a bribe, and they allowed him to get into a conveyance; but when he approached near the Cutcherry they obliged him to alight from his palkee. I and other people accompanied him to the Cutcherry. When he arrived there the Gentleman (Mr. Hayes) called him a "Bura Hurmazad," and ordered the Nazir to give him 20 blows of the rattan. I had seen Mr. Hayes before then, and I heard him give the order; it was given immediately on my master's arrival at the Cutcherry. Mr. Hayes said to the deceased "You are a Bura Hurmazad," and to the Nazir "Give him 20 blows of the rattan." Upon this order being given, his hands were bound, and he was fixed to a post that had been put up. This was immediately after the order being given; nothing else passed between Mr. Hayes and the deceased but what I have told you. Upon his receiving the first stroke of the rattan he cried out "Das, te Sahib" after which I could hear no more. There was a great crowd collected, but I could see him beaten from the place where I stood. On having received 10 strokes of the rattan the cord with which he was bound gave way and he fell. He was again suspended, a chuprassee caught him by the back of the neck; I was not near him, being at the outside of the crowd. He did not fall to the ground, but on one of his sides. He was immediately raised and tied up again, and the other ten strokes were given. Mr. Hayes had come down from his Bench, and was standing on the steps of the verandah near to where the punishment was inflicted. Mr. Hayes ordered him to be tied up again, and receive the remainder of the punishment. I know the Bengalee Doctor of the station. I did not see him present at the time: I don't know the person of the English Doctor. After the punishment was inflicted, the chupprasses laid hold of him and carried him to the Jail, and I also accompanied him as far as the outside of it, but was not allowed to enter. I observed that his back was cut in several places. I was prevented from entering Jail by the sentinels (*Sipahies*.) They would allow no body to enter. About 4 or 6 dundas before the close of day I took some water and some other things for my master and went to the Jail, but was prevented from entering by the Sipahies on duty. I again went next day with some eatables for him, but was in like manner not suffered to go in. I was prevented by the Sipahie, who told me there was no order from the Sahib to let me in. After these two unsuccessful attempts I did not go to the Jail again; the other servants did. I did not see my master again till I saw his corpse taken away, and assisted in getting it burnt. On the fourth day I heard from the people of the town that he had died in the night; in the morning, his death was publicly talked of by the town, and I saw the prisoners of the Jail of Tipperah take out the corpse.

Mr. FERGUSON. Does the word he uses not signify Convict?

INTERPRETER. The word is "Bundhoon" and signifies a Prisoner who has rings on his feet, but may also signify a "Convict."

Mr. FERGUSON. I never heard it interpreted otherwise.

Examination of the Witness continued.

About 4 dundas (an hour and a half) after day-break I saw his body carried from the jail to the hospital. There were no other but those "Prisoners" carrying the corpse to the hospital; I went with it: the body was placed on a cot outside the hospital, and the Darogah and Nazir of the jail wrote on a piece of paper. I was close to the corpse at the time. I saw the back of the corpse: it was swollen, and there was matter and blood, and the cloth was stained by it—I removed the cloth and saw the bare back. The body remained there about 3 hours (*pukka ganta*). I told Radakant our Mookteear to inform Mr. Hayes about it, and to ask permission to take away the corpse to the deceased's house to burn it, as he had a son and a nephew living. I remained with the corpse, and he proceeded to the Magistrate for that purpose. Radakant told me permission was refused. The body was then taken to the banks of the Goomtee and there burnt. There were other servants of the deceased beside me; and 4 or 5 (*Bundhoons*) convicts went along with us and some sipahies, and we took the body to the banks of the Goomtee, pursuant to orders, not of our own choice. The Sahib gave the order to take it there. The Mookteear told me (not evidence.)

Q. Why did not you and the other servants take the body to the deceased's own house?

A. The Sahib forbade it.

Q. But who prevented you?

A. There were 2 sipahies and 4 convicts went along with us, and we were prevented from taking it anywhere else.

* "Have mercy on me, Sir,"

† It will be impossible to understand from the evidence in what manner they mean to say he fell, unless we suppose that the rope by which the deceased was tied at the wrists gave way, and he fell as far as the hand round his waist would admit.

‡ About an hour and a half; 8 dundas—3 hours.

Examination continued.

Pertaub Narayn's own house was at a place called Santa Seeta; he had gone and remained 3 days at home. Mr. Hayes had left Comillah and gone to Augurtollah, and Pertaub Narayn had gone home and remained three days there and then returned to Coomillah. Two days after Pertaub Narayn came back, Mr. Hayes returned in the night and next day Pertaub Narayn was punished. I don't know why my master went home, but a son of his had died about that time. His son died while he was at Tipperah: about fifteen or twenty days before he returned home the boy died. Pertaub Narayn is of the Sahr caste, a man of property possessed of Zumeendarees.

Cross-examined by the Advocate General.

I accompanied my master to Santa Seeta. When he left Coomillah to go to his house I was at my own house. Santa Seeta is two or three days' journey from Coomillah, about 3 hours distant from Nyacooly. Q. Did you hear of any disturbance in the Zumeendaree while you were at Santa Seeta?

A. There was no disturbance I know of.
Q. Do you know a person of the name of Seebnath Basu?
A. I know no person of that name.
Q. Nor Burlull Parsaud Chowdhree?
A. No.
Q. You have not lived much in that Zumeendaree? A. No.
A. Yes, I have; I have been 25 or 26 years in the service of Pertaub Narayn.
Q. Then do you know a person of the name of Ram Gutee?
A. No.
Q. Don't you know that your master was charged with creating a disturbance during these three days?
A. No, I do not. I never heard of my master being charged with making a disturbance.

Q. Didn't your master walk by himself from the place of punishment to the jail?
A. No; three or four chuprassies supported him.

Q. Do you know Gopeenant?
A. Yes; he is Pertaub Narayn's nephew; his sister's son. He was present when the corpse was burnt on the Goontee. TN. Mooktear gave 10 rupees to the Sipahees and 4 rupees to the Bundhooas, and 3 (qu?) for a spot of ground whereon we burnt the body. There were a great number of persons present when the *wirting* (*Fusque* on the body) took place. I know Kahanoram the Native Doctor. I did not see him there. I did not see the body taken out of the jail, but saw it when proceeding from it on its way to the hospital, and I followed it. I don't know in what month Pertaub Narayn died; and I do not know exactly how long his son died before he left Tipperah. My master was not punished in the usual place of punishment. The stocks were previously carried behind the Cutcherry and put up there; there was a great crowd of people.

Examined by Sir Francis Macnaghten.

Q. Did you ever see people punished there in that manner before?
A. I have seen people receive three or four strokes before, but not behind the Cutcherry. The day before Pertaub Narayn was beaten I saw a person get five strokes.

Examined by Mr. Money.

The Whipping Post was removed from the front to the back of the Cutcherry on Pertaub Narayn being brought there, there is a larger open space in front from which the Whipping Post were removed then at the place they were removed to. The other man I have mentioned was punished that very day previous to Pertaub Narayn, not after.

SHEER CHUNDER CHORABARTEE.—Examined by Mr. Ferguson.

A servant to the Salt Agent at Nyacooly in the Zillah of Tipperah, went to Comillah in the month of Assan. Recollects the two Chupprassies seizing in the month of Srabon (*gives the same account of his being taken to the Cutcherry*). I went with him, he was prodded before Mr. Hayes, who said he was a "Burra Hurumzaduh" and ordered his Nazir to give him twenty strokes of the rattan. The Whipping Posts were moved behind the Cutcherry; he was tied up, and Mr. Hayes ordered the Korabdar (Whip bearer) to give him "twenty hard cuts" with the rattan (*Gives the same account of his imploring mercy, not being heard, and of the string with which he was bound slipping after the first ten strokes and his being tied up again*). After receiving these twenty strokes he was speechless, insensible. Mr. Hayes was standing before him, and saw him in that state, then ordered the Chupprassies to take him to the jail, they accordingly laid hold of him and dragged him along to the jail, I and many others following him. The blows had cut into his back and many others following him. The blows had cut into his back was cut and bleeding in several places. On the 6th day in the morning we heard that he had died during the night preceding. His body was taken from the jail to the hospital. I did not uncover it; but I saw the cloth marked with stains. Something was taken down in writing when the body was at the hospital. I did not see Mr. Hayes there: none of the deceased's relations were present.

* Banker.

Cross-Examined by the Advocate General.

I never was in the service of Pertaub Narayn nor any of his relations. My usual residence is at the Bazar at Santa Seeta under the Salt Agent there; I came to Comillah from Santa Seeta in the month of Assan. Pertaub Narayn's son died in Assan, I arrived at Comillah five or seven days before the close of Assan, and on the 15th or 16th of Srabon Pertaub Narayn was apprehended. Pertaub's son died a day or two before I left Santa Seeta, and he seemed very much afflicted for his loss. When whipped, he was fastened to the posts with cords by the hands, feet, and middle. A cord went over his cummerbund. He was dressed in a jacket (*ngro ka chilo*), which was taken off, and the cord was tied round the *dootee chilo*; he had no cummerbund on, being dressed in the Bengalee fashion.

Cross-Examined by Mr. Ferguson.

The Dootee came so high (pointing with his hand) and oil above that was exposed. The hands were exposed. After the punishment, the wounds on his back extended so far (showing with his hand on the back of another Bengalee, and pointing from the shoulders down to the small part of the waist.)

Sam Doss.—Examined by Mr. Money.

I was in the service of Pertaub Narayn Doss, was at Comillah at the time he was beaten. Went with him when he was taken from his quarters and carried to the Cutcherry, when he went in, I stood outside. (*Gives the same account of Mr. Hayes calling him a "Burra Hurumzaduh"* ordering him to get 20 hard cuts with the rattan, his being suspended, slipping after the first 10 strokes, the Saloh ordering him to be tied up again, and his getting the remainder). Mr. Hayes was standing in the Verandah. I do not recollect at what distance he stood: it was not in my mind at the time, seeing my master punished. It was as far as that inkstand, pointing to *otem* (the table). I did not see my master again while he was alive. I accompanied Sumbhoo Doss one day to the Jail; and we attempted to get in, but the soldiers prevented us. I went and saw his body when it was brought out of the jail; when carried to the foot of the hospital. I saw the back covered over with a cloth, which was stained with blood and mucus; and I saw the Nazir and others taking down something in writing. I did not see the back uncovered; at this time: when taken from the place of punishment to the jail his back was bleeding.

Cross-examined by the Advocate General.

I am no relation of Sumbhoo, the former witness: he is of a different caste from me. On the return of Pertaub Narayn from his house to Comillah, I came along with him: Sumbhoo also came with us; I don't know how long before the punishment; I don't recollect how many days. I believe he lived 3 days after being punished.

Q. How near were you ever to Mr. Hayes?

A. I was not inside the Cutcherry but was standing along with the crowd about as far from Mr. Hayes as the back rail of the Jury Box. (*pointing from the witness box*) I was standing before the Cutcherry, facing where Mr. Hayes was sitting; I was outside and he inside, so I could not then see him; but when he went out to the back verandah I could; the other people went round, and I was there as distant from him as that rail of the Jury Box. (*the back rail of the Jury Box*) I don't know the Nazir; there were other people with Mr. Hayes: Sikars, Officers, &c. I was standing with the crowd.

Q. The crowd were making a great noise, I suppose?

A. No; they were not making any noise. I was not far from the Whipping Post: the Korabdar was standing near it. Mr. Hayes gave him the order for the 20 ratans from the verandah. I am sure that I heard him give it. I don't know what was done inside Cutcherry. I did not follow Pertaub Narayn to the jail; I saw the Chupprassies carrying him away, his feet were tramped or dragged along; I did not follow and I know none of the Chupprassies. I know Gopee Naut, Parsaud Narayn's relative (nephew) he was present at the burning of the body; and was also at the hospital when the people were writing something there (*the Soorti Haf*) I never was in the jail during Pertaub Narayn's imprisonment. I went to it one day along with Sumbhoo, about 10 o'clock in the morning; but we were prevented from entering. There were other servants of Pertaub Narayn at Coomillah at the time besides me, there was his Mooktear Kadakonta Dut, and Sumbhoo, and a man called Mottra. His son died at Santa Seeta in the month of Assan. I was at Santa Seeta at the time, and was not with Pertaub Narayn before he returned home and went back to Coomillah. I was his shaving Barber. My brother Luckee had accompanied him in my stead. I was never in his service before that, but had shaved him several times.

By Sir F. Macnaghten:

I saw the body after it was brought out of the jail on its way to the hospital: it is carried on a *Adola* (Native bedstead); and I was present all the time the body remained at the hospital, and accompanied the corpse to the place of burning on the banks of the Goontee. The body was not disturbed or shaken about from the time it was removed to the hospital till it was carried to the banks of the Goontee. It was lying with the face downwards. When the body was brought from the jail, it was lying on its back, and at the hospital

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it was turned over, (on the face) and in that state remained till it was taken up by the Convicts and carried to the banks of the Goomtee; this was about two hours and a half after. About an hour and a half after it had been brought to the hospital it was turned over when the Nazir and others came to examine the state of the body. I don't know the Nazirs: I saw some people writing something, and these persons were present when the body was turned over.

Re-examined by Mr. Money.

When I was at Coomillah Luckee Narayen (his brother) staid at home.

Cross-examined by the Advocate General.

When the corpse was turned over there was blood and matter about it and a very strong smell.

RAM SHORN DAY.—*Examined by Mr. Fergusson.*

I am in the service of Raj Lochun Ghose, a Zumeendar in the Zillah of Tipperah; I knew the late Purtaub Narayen Doss, and am acquainted with what happened to him in the month of Srabon last: he was beaten with the rattan. I was at my quarters and heard people say that the Chupprasseses had come and taken away Ram Narayen Baboo, and that he was ordered to the Cutcherry on foot. Hearing this and knowing Ram Narayen to be a man of great respectability, I and many others went to the Cutcherry. I found a great crowd of people collected, and I found Mr. Hayes standing in the verandah. He said to Purtaub Narayen "You are a very great Hurumzadah, I'll punish you with 20 strokes of the rattan," Purtaub Narayen said "If you give me even two strokes I'll die: I have not committed any great fault; if I have, fine me." Mr. Hayes would not (listen) attend to what Purtaub Narayen said, and desired the Nazir to proclaim that Purtaub Narayen was to get 20 strokes of the rattan. The Nazir did so; and the Chupprasseses then laid hold of him, stripped off his clothes, bound his hands, and tied him up. The three posts that are set up for this purpose have a board at one side to prevent the breast from being hurt. His middle was tied to this board; and Mr. Hayes ordered him to receive 20 hard cuts with the rattan. After receiving one stroke he cried out "Do, aee Sahib." On his having received 10 strokes, the cords with which he was bound either slipped or broke (I don't know which) and he fell down on his side; he was insensible at the time. I was at a short distance, and Mr. Hayes ordered him to be tied up again, and then he got the remainder of the punishment, ten strong cuts with the rattan. Mr. Hayes then ordered him to be taken to jail. I followed him part of the way, I saw his loins; there were marks of the rattan thus far (pointing with his hand from the shoulders to the middle of the waist), in some places blood was drawn, in others not. I saw his body some days after at the door of the jail, I knew the body and observed the back, and so did several others. It was uncovered. There were several parts depressed; there was blood and matter, and the back was black. Four Convicts took it away from the door of the jail to the hospital. I saw the body at the outside of the hospital, and the Nazir, Mohurir, and others took down something in writing; and after that 4 or 5 of Purtaub Narayen's Servants, 3 or 4 Convicts, and 2 Sepahies took away the body to burn it on the banks of the Goomtee.

Cross-examined by the Advocate General.

I am no way related to Purtaub Narayen Doss. I am an inhabitant of Mazdee, 2½ days journey from Coomillah. There were a number of people with me looking at the body outside the jail, but I did not attend to any of them, so as to be able to say whether I saw any person I knew or not. I was as far from the Whipping Post when the punishment was inflicting as I am from that Gentleman (pointing to Mr. Abbott.) The Whipping Post stood 4 or 5 feet from the Verandah; and was nearer the Cutcherry than I was. A great crowd of people had formed round the Whipping Post, and I was in it.

Q. You saw the Nazir?

A. I saw him upon that occasion.

Q. Were you in the habit of attending the Court?

A. I never was at the Cutcherry before that day.

Q. No! What took you to the Cutcherry that day?

A. I went to see what was going to be done to a person of such respectability, whom I heard they had taken there. I went about 10 or 11 o'clock (derh puher).

Q. How came you to be at Coomillah?

A. My master, who is a Zumeendar, had written to me that I was incapable of collecting his rents, and threatening to turn me away; and I went to pacify (intercede with) him. I had arrived there about 14 or 15 days after this happened, and I remained there about two months afterwards.

Q. Did you deliver your message to your master and succeed in your object?

A. I did, my master promised he would restore me to my situation.

Q. And he sent you Bandoban?

A. He sent me to Calcutta to his Mookhtear, to see if justice could be got, as nothing like it was to be had at Tipperah (a laugh.)

Q. Didn't he send you to Purnaud Narayen's nephew by the male side?

A. No.

Q. Don't you know Bandoban Chander?

A. Yes, I know him since being in Calcutta.

Q. Don't you know him to be his nephew?

A. Now I know it.

Q. Don't you know Gopee?

A. No.

By Sir F. Macnaghten:

Q. Where you very intimate with Purtaub Narayen?

A. I was not intimate or acquainted with him. He was a man of opulence, I am poor man.

By the Advocate General.

I knew him by sight; I never went into the jail. When I saw the body at the door of the jail it was lying with the face down; and it was carried to the hospital in the same state, and there the cloth was taken off and the body examined.

Re-examined by Mr. Fergusson.

The corpse reached the hospital a little before me. I saw it only with its face down, I saw it carried to the hospital.

By the Advocate General.

Q. Did you ever lose sight of the body on its way to the jail?

A. We went round a little and lost sight of it for a short time. The distance between the Jail and the Hospital will be two to four hundred kuth. I lost sight of the corpse a very short time, and I don't know but they might have touched the body before I came up, as they reached the the hospital a little before me. I saw the cloth removed from it and the writing which took place

RAJ CHUNDER NUNDEE.—*Examined by Mr. Money.*

In the service of Noorin Nussee, a Beebee of Dacca; knew Purtaub Narayen, and was at Coomillah as the time of his punishment: my mistress has got Talooks there. I was sitting near Purtaub Narayen Baboo about half past nine o'clock in the morning when two Chapprasese came there and said "You are required at the Cutcherry. (The same account as before of his going part of the way on foot, &c.) He was carried before the Magistrate, and Mr. Hayes said "You are a Hurumzadah." I had followed and was at the Cutcherry at the time Mr. Hayes said "Take him to the Whipping Post," and the Whipping Post was removed from the front (South-side, we think) to the back part of the Cutcherry. Purtaub Narayen was taken there, and his jacket taken off, and the Judge caused it to be proclaimed that he was to receive 20 blows of the rattan. He was tied up, and on getting one stroke, he cried out "Do, aee;" "I am unable, (said he) to bear this punishment; but fine me, if you please, I am willing." After he had received as far as 10 strokes of the rattan he fell, from the rope slipping. The chupprasses then seized him by the back of the neck, and Mr. Hayes said "Tie him up again, and give him the rest, and lay it on well." He seemed senseless after the first ten strokes. Mr. Hayes had left his bench and was standing at this time on the steps of the verandah. The Whipping Post was near this, and Mr. Hayes could see Purtaub Narayen when he fell. Having got all the blows, he was unbound, and the chupprasses took him towards the jail. The rattan had cut into his back. I did not follow him towards the jail, and I did not see him again alive. On the north side of the hospital I saw the corpse lying on a Katoola with a piece of cloth over it. I did not see the body bare. The cloth was stained with blood, I afterwards saw 4 or 5 of his servants with 3 or 4 Convicts and 2 or 3 Sepoys taking away the body to be burnt.

By Sir F. Macnaghten.

Q. How did he go from Cutcherry to the Jail?

A. Three or four Chupprasses dragged him along from the Cutcherry to the Jail; I did not hear him say any thing; he was speechless.

RADA KANT DUTT.—*Examined by Mr. Fergusson.*

Was Purtaub Narayen's Gomastah, and was with him at Coomillah at the time of his death. After this happened, I went to Mr. Hayes, and told him that my master Purtaub Narayen had died in the jail, and if he sanctioned it I would carry the dead body to his family. Mr. Hayes said I should not be allowed to do so. He is dead, what is that to me? I then told him, my master is a Hindoo, and has a son, a mother, and a nephew; and unless the body went home, the necessary ceremonies could not be performed. Mr. Hayes said it would not be allowed. I saw my master punished with the rattan on the Monday previous to his death by Mr. Hayes's orders. I heard him give the order. On his being brought before him, Mr. Hayes said, "You are a very great Hurumzadah," and ordered him to be beaten. The Whipping Posts were brought from the North to the South of the Cutcherry, and one Sebbhoor Nundoo Paul received 5 strokes of the rattan. Mr. Hayes said he had behaved with disrespect, and ordered him to be punished. Then Purtaub Narayen Doss was tied up. Mr. Hayes desired the Nazir to proclaim that Purtaub Narayen was going to get twenty strokes of the rattan for going home. He had come to Coomillah in

* Query—4 or 6 cubits?

Mang, and remained there in obedience to Mr. Hayes. When punished he said, "If you beat me with the rattan, I'll die." He who were Attorneys and Agents for other people remained, and the Whipping Posts were surrounded with Peons, &c. Mr. Hayes ordered the Korabardar to lay it on tightly. After they had whipped him and taken him down, I saw him in the hands of the Chuprassies; his back was bleeding, as they were carrying him along. I saw his body afterwards, but never saw his back uncovered. I went to the Darogah to get admission into the jail, but he refused to let me enter, as it was the Magistrate's order that nobody should be admitted.

Cross-examined by the Advocate General.

I did not see Pertaub Narayn at all after he was sent to jail. I went to the Darogah's quarters to get admission next day and the day after, but was refused. I never saw Pertaub Narayn outside of the jail eating his victuals. I never went with Goopee or any other servant. There is a place (medan, or plain) outside the jail, where the Convicts cook, and the people come to eat their meals. I never saw my master there, and never saw him in life at all after he was taken to jail. I was with him all the time at Coomillah. I did not return to Santa Seeta with him, but went to my own house in the pargannah of Omirabad; four or five days journey from Comillah. Santa Seeta is about two days journey. I spoke to the Nazir to make application to Mr. Hayes for liberty to take away the corpse to my master's house. I then applied to him myself; there were many of the Omials present at the time. I know the Darogah of the jail, his name is Kaleel, and I know Ram Dial Singh, the Subadar. On Mr. Hayes leaving the station I went home. I don't know how long my master was away from Coomillah. Rajlochan and Seebnaun Ghose were quarreling about a Zumeendar: Pertaub Narayn used to favor Rajlochan and for that reason Seebnaun presented a petition against him; and that was the reason he was kept from his home.

Re-examined by Mr. Ferguson.

Q. Was Pertaub Narayn ever tried?

A. No.

Q. When was that complaint made of which you have just spoken?

A. In the month of Poos the complaint was made, and in Maug he put in three securities.

Q. Then it was not on this occasion of his punishment?

A. No; there was no complaint on this occasion.

Q. Was there not another complaint made in the month of Srabon?

A. No; I don't know of any; there was no process issued on this occasion.

GOOPEE NAUT.—Examined by Mr. Money.

Pertaub Narayn is my uncle and I live in his house and learn to read and write. I was at Coomillah at the time of his death, and am acquainted with the circumstances of the punishment. (His account of the punishment was the same as that of the former witness.) After receiving twenty blows he was untied, his eyes were closed, and he seemed almost lifeless, and four or five Chupprassies laid hold of him and dragged him along to the jail. I did not accompany him to the door of the jail, and I don't know what they did with him after they took him in. I went to the jail that same day with some Sugar Candy dissolved in water to give him, but the Jamedar, Sufadar, and Chupprassies would not let me enter. I said them to let me in, I wish to give him some water to drink: or if you will not allow me, do take it to him yourselves, and they would do neither. I saw the body at the hospital; it was covered with a cloth. I saw it uncovered afterwards. It was full of matter and putrid ("rotten"). When Radakant made the application to be allowed to take away the body, I was at a little distance, and heard him make the request. He said "My master has got a son, a brother's son, and a mother: allow me to take the body to them." Mr. Hayes said, "I will not allow it, burn him here." He did not assign any reason. I was not in the jail at all when my uncle was there.

Cross-examined by the Advocate General.

My uncle never came outside the jail after he was confined; and I never saw him inside of it. I never went there with any of the Servants. I don't know the Darogah of the jail nor the Subadar. I never saw my Uncle outside where the people came to eat their victuals.

TARINER SUNKUR DUTTO.—Cross-examined by Mr. Ferguson.

Q. What Business are you?

A. My father is a Zumeendar; I read and write, and can read Persian and Bengalee. I was in the jail at Coomillah with Pertaub Narayn. I was in the jail before him. I was the Doctor's Sirkar. I tell you Pertaub Narayn being brought into the jail after being punished, three or four Chupprassies dragged him into the jail, and he was laid prostrate on the ground in that part of the jail where prisoners are put that are to be examined. He was in a senseless state. When I saw his back which was soon after his arrival, it was cut open in several places and bleeding. The marks appeared so low on his back (showing with his hand). After he had remained there 3 or 4 dundas, the Kilaburdar (a Person who has some charge of the rest) brought some oil and water and washed away the crown of his head. When he had come a little to himself the others prisoners carried him inside, and put him upon a mat

that the Kilaburdar gave. He had then come a little to speak. About 3 o'clock he began to speak a little, but very low. I continued in the prison till his death. He died towards morning on the 4th day, after he had been brought into the jail. He used to lay upon his face, saying that his back smarted ("was burning"). On the 3d day the wounds began to suppurate, he complained of a great heat in his back and begged us to fan him. He said "None of my servants can come to me; take a little rice and squeeze it in water and I will eat it." I said "they are all Mussulmans about us, how can I do that?" There was no care taken of him in the jail.

Q. What was the cause of his death?

A. He had nothing to eat for 3 days—his back had become rotten, he was a great man and had been brought up tenderly; and was not able to endure it. I saw him every day while he was in the jail. I was as far as the end of the table (of the Supreme Court) from him. I know what the Cholera Morbus is: there was nothing of that sort about Pertaub Narayn. I saw his corpse before it was taken from the Prison; it was laid upon the mat and a small piece over it; that was all. In the mornings the Prisoners got out of the jail to wash their face and hands. The English Doctor came in and went round the Jail, and was about to go out, when the Chupprassies said to him, "Baboo Pertaub Narayn is dead here," Kanoram the Doctor and the Darogah came in consequence of a message sent to them. The Darogah said "Let us take him to the hospital, there is life in him yet; and the blame will not be on us." They brought him on a mat and placed him on a cot. I had seen him about one o'clock of the morning on which he died; he was at that time above, and I then went to bed; and when I rose in the morning I discovered he was dead. I don't know at what period of this interval he died. He could not have died of the Cholera Morbus without my knowing it. On the mat he had lain on, and on which he was carried out in the morning, I saw nothing that indicated that disease. Pertaub Narayn never went out of the prison from the time he went in. He lay on his face, and was in such a state as not to be able to get up. When taken out of the prison he had a cloth on his back drawn over him from head to foot. His clothes were not changed, he bad them on all the time. In the morning he was removed out of his place. I saw his doctee and there was no particular mark about it that indicated any thing.

Cross-examined by the Advocate General.

It is usual to take out all the prisoners in a body once a day to wash, eat, &c. except those who are opulent (of higher rank) who are taken out by themselves, attended by a Chupprassee. I don't know any thing about an indulgence of getting out by paying money. I never paid any thing. I and Prawn Kissen used to come out together every day. I mentioned to the Darogah that a great man was in jail in great want of food; but he said there was no order from the Judge to give him any thing. All the prisoners were allowed to go out. I mentioned Pertaub Narayn's situation to the Darogah.

Q. Did not Kanoram the Bengalee Doctor visit the Jail twice a-day while Pertaub Narayn was there?

A. I did not see him once.

Q. Is it not the practice for him to come once if not twice every day?

A. He did not come at all during these 3 days; when he is sent for particularly for any body who is sick he comes; but it is common to send sick persons to the hospital.

Q. Don't you know that the District owes the hospital to Mr. Hayes?

A. No; I only know it is a Company's Hospital.

Q. How often have you seen the Surgeon in the Jail?

A. During the 4 months I was there I saw him 4 or 5 times. I saw Ramdyal Singh the Subadar in the jail the day Pertaub Narayn died; but I did not see him there during the three days he had been in confinement. I know Shaikh Mahmood the Duffadar of the jail; I saw him in the mornings of these 3 days visiting the jail. I did not speak to him about Pertaub Narayn; because I was a Prisoner myself, and we have not the power of speaking to him; we are in dread of him. I told Prawn Kisan that Pertaub Narayn was very ill; the Baboo said, "What can I do? I am in trouble myself."

Q. Have you ever seen 20 rattans inflicted on any other person?

A. I have seen a person get 5, 10, 15, 20, 25, strokes with the rattan in Chittagong Zillah, but I have never seen a man in that situation in life beaten with the rattan, and never saw any lose his senses so long. I have seen a man when he got 20 strokes, cry and make a great complaint, and I have seen them taken away to the hospital; but I never saw a man of this person rank in life so treated.

Q. Do you think 20 strokes of the rattan could have caused a man's death?

A. A common man would bear up under an infliction of that kind; but not so man who had been brought up tenderly.

(The Advocate General is asking these questions seemed exceedingly amused)—But if you or any of the rest had been beaten would you have died?

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A. I told Mr. Hayes that I was the son of a Zumeendar, and that if he caused me to be tied up and beat, I should die. And if I had been so used I should have died.

Q. (Laughing still.) But we are not bound to believe that you are not the son of a Zumeendar?

Mr. FERGUSON. This rattanning Zumeendars seems to be a common joke at Tipperah; and it now appears it is likely to become so here:

ADVOCATE GENERAL, (Smiling to the Witness.) But you seem to think this rattanning a punishment of mind as well as of body?

A. A man of respectability cannot support any ignominious punishment like a common man.

Mr. FERGUSON. I do think that there is something in that.

Q. Do you know Purtaub Narayn's caste?

A. He is of the *Sahoo* (Banker) caste.

Q. Is not the "Sow" caste the very lowest?

A. It is lower than the Koit caste.

Re-examined by Mr. Fergusson.

Q. Do you know any other cause but the beating, and the confinement in jail that caused Purtaub Narayn's death?

A. I am aware of no other cause.

PRAWN KISSEN CANNOGEO.—*Examined by Mr. Money.*

Q. Who are you?

A. I am a Zumeendar of the Zillah of Chittagong and don't follow any profession. I did not know Purtaub Narayn till he was sent to jail where I was then a prisoner. My situation in the jail was as far from him as that corner (pointing to a corner of the Court Room) I saw him after he was brought in, not just immediately, and he was lying upon his face. I saw the marks of blows on his back for a space about that length, (measuring with his hand) some parts were opened, and the flesh was cut and bleeding and the rest was discoloured. I saw him again in the evening in the same state lying on his face. I did not speak to him then; but not next day but the following that I spoke to him. He answered me but seemed in a weak state. I never saw him go from the place; to my knowledge he remained there all the time. I used to go out in the morning to a place to wash my feet and hands. Purtaub Narayn did not go out at all to my knowledge. I did not see him get any medical attendance; his back putrifried, (became rotten.) I did not see any thing put to his back; if there had I certainly should have known it. I saw him for the last time about the time the Prisoners were counted in the evening and he died next morning. I did not see him in the interval. When I last saw him, I did not say much to him, and he did not speak to me; he was senseless. He did not die of the Cholera Morbus; as there would have been many indications of that—vomiting and purging. I must have known had he died of that disease: it is attested with some noise. I saw him next morning about seven o'clock, he was lying on a cloth that covered the mat and he had a cloth covered over him! There was no appearance about his bed of his having died of the Cholera Morbus.

Q. Do you know the cause of his death?

A. I believe his days were numbered.

Q. Was there any appearance on the cloth that the man had died of Cholera Morbus?

A. No, there was no such appearance.

Cross-examined by the Advocate-General.

Q. Do you know any thing there was to hinder Purtaub Narayn from going outside the jail, as you did?

A. Nothing but his inability to do so; If he had been in a condition I suppose he would have gone.

Q. Was there any thing to hinder him from getting meat and drink if he wanted any?

A. Purtaub Narayn said to me one day he wanted some water. I said "your servants, if they were here, would bring it for you; how can I bring it?" I then spoke to the Darogah about it; but he said there was no order to his servants being admitted.

Q. How did you get food?

A. Our servants were allowed to attend us outside, and when I went out my servants brought me what I wanted.

By Sir F. Macnaghten.

Q. Did Purtaub Narayn eat anything, or did he desire to have any thing to eat?

A. He said "one day he wanted some water." I told him I could not bring him water. I know the Doctor Kauoram. I was put in jail in Baisakhi, and Purtaub Narayn was put in on Strabon. The day after Purtaub Narayn was confined I sent for the Doctor, being ill myself, and he came and sat down near my bed. He did not see Purtaub Narayn at that time, and I don't know who he did after. While the Doctor was sitting near me I went out for a particular purpose and I met my servant, and during that time the Doctor went out. I did not see him again; I had only a slight pain in my bowels and he sent me what was necessary;

Re-examined by Mr. Fergusson.

Q. Was Purtaub Narayn in a state to go out or render himself any assistance during that time.

A. He was lying in a state of insensibility, and if he could have gone out or rendered himself any assistance I think he would have done it.

By the Advocate General.

Q. Do you say he could not go out during these 3 days?

A. I never saw him rise up all that time, any time that I saw him he was lying on his belly in the same state.

By Sir F. Macnaghten.

Q. Did you tell the Doctor in what state Purtaub Narayn was?

A. No; I saw a Prisoner himself and did not think it my business to inform him about the next.

RADAKANT re-called.—*Examined by the Advocate General.*

Q. When you applied to the Nazir about the body, did he ask you any questions about the cause of Purtaub Narayn's death?

A. No; I first applied to him about the corpse; and declined communicating my request to the Judge, and I then did it myself.

Q. Did you tell the Nazir that he had died of the Cholera Morbus?

A. No.

By Mr. Fergusson.

Q. When you saw the body—did you see any thing about the corpse itself, or the cot on which it was placed or the clothes about it that indicated he had died of the Cholera Morbus?

A. No, I did not; nor did I say to the Nazir that he died of that disease. Indeed how could I tell him so when it is not the fact.

MATHEW NISBETT, Surgeon, called three times but did not make his appearance.

MR. FERGUSON hoped this circumstance would be taken notice of by the Court; and at the same time observed that anticipating the defence that he understood would be set up, he thought it would be necessary to recall the witnesses and examine them to this particular point, whether there was any appearance that Purtaub Narayn died of the Cholera Morbus.

SUMHOO DOSS, SHEEB CHUNDUR CHOCRABURTEE, RAM SHORN DAY, GOFES NAUT DOSS, RAJ CHUNDUR NUNDEB were accordingly recalled, and deposed unanimously that there were no marks about the corpse, the bedding, or the clothes of the deceased, that indicated he had died of the Cholera Morbus; and here closed the case for the Prosecution.

EXCULPATORY EVIDENCE.

First Witness:—RADA KISSEN MOONSHEE.

Examined by the Advocate General.

I am a Wokeel of the Court, and a Talookdar of the Zillah of Tipperah. I knew Purtaub Narayn Baboo; I was at Coomillah when he received a certain punishment. I was in the Cutcherry when he was brought into the Court where Mr. Hayes was sitting doing business in the usual way. I saw Purtaub Narayn in the Cutcherry, but do not know who brought him in. I heard Mr. Hays say there were many complaints against him, and that a sentence had been given for him. Mr. FERGUSON objected to this being received in evidence.

By Sir F. Macnaghten.

Q. Was any thing taken down in writing?

A. I did not see it: Mr. Hayes after leaving the bench gave the order for his punishment. He said Purtaub Narayn is a man who has been exciting riot, and against whom many complaints have been made; and on this account 20 strokes of the rattan is to be inflicted on him. The Nazir was ordered to proclaim this, which he did; and after this was done according to Mr. Hayes's order, Purtaub Narayn was tied up and 20 strokes of the rattan were given him. The blows were given on that part of the body where it is usual to inflict them. I have seen this punishment often at the Cutcherry, and this was inflicted in the usual manner. I saw no unusual severity in this case; I did not see any thing happen during the infliction of the punishment; I did not observe his back when it was over. I saw the rattans in the Koraburda's hands. I don't know with which he beat him; he has usually four or five in his hand.

Q. What sort of rattans?

A. Those with which people are beaten.

Q. Of what size?

A. Rattans are not all of one size, but this did not seem to differ from the rest, and he was beaten only with one rattan. He then walked along to jail accompanied by the Chupprasses; he walked without any assistance. He was a strong stout man about 45 or 46 years of age.

Q. Is it usual for Hindoos to bathe when sick?

A. When under a fever they do not; in any other complaint they do. Purtaub Narayn did not appear sick when brought to the Cutcherry.

Cross-examined by Mr. Fergusson.

Q. Mr. Hayes's displeasure would not be a slight matter to you, I suppose?

A. It certainly would not be good for me.

Q. He has it in his power to fine you occasionally, has he not?

A. Ululta (certainly). He can and has already fined me sometimes,

Q. Do you know whether any proceedings were instituted relative to the affray with which Purtab Narayn was charged?

A. I don't know; I only heard the order of punishment given.

Q. Before the punishment, was he heard in his own defence?

A. I did not see any thing of this kind; I only saw the punishment.

Q. On your oath, old man, don't you know that there was no judicial proceeding instituted, no defence heard?

A. I heard only the order of punishment.

Q. Was there any specific complaint against him in the Court for which he was flogged?

A. I did not hear of it; but I know nothing of the Foujdaryy department.

Q. Did you hear of any complaint against him at that time?

A. No.

Q. Did the Judge call upon him for his defence.

A. No: I was not in Court when he was brought in; I came in and saw him there some time afterwards; but I know of no complaint in the Court against him at this time.

Q. Did you ever hear before of any Zammeendar being flogged without any judicial proceeding? (Question objected to.)

By Sir F. Macnaghten.

I have seen many persons flogged; 30 is the utmost number I have seen inflicted. This was done in the usual manner. I never knew an instance of a man dying from the infliction of 20 stripes. Purtab Narayn was tied up at the beginning and continued so till the end of the punishment. The cord or bandage did not slip or break, there was no cessation of the punishment; it was continuous.

Second Witness—MINZA USHRUF BEG.

Examined by the Advocate General.

I am the Foujdaryy Nazir of the Zillah of Tipperah. I know Mr. Hayes, Judge and Magistrate there, and knew Purtab Narayn. I recollect Mr. Hayes going to invest the Rajah of Tipperah; he returned in about 10 or 12 days. Purtab Narayn was required to be in attendance at Coomillah for something when Mr. Hayes departed. My office includes the duty of causing people to be apprehended. (Here he was shown a Paper written in the Persian character, and after inspection, swore it was the Purwanuh on which Purtab Narayn was apprehended.) Purtab had gone into the Mofussil, and on his return to Coomillah had concealed himself, and I had ordered him to be searched for, and my men took him and brought him before me and I carried him before Mr. Hayes in the Cutcherry; and I delivered in at the same time the warrant I had received (the purwanuh produced) and my report. This is the original Purwanuh; the very one given to me. (On being more particularly questioned he said,) This is only a Copy of the Purwanuh. This copy was made in my presence; but I did not make it; the original is among the records of the Zillah. This (the Stamp on the Paper) is the seal of the Foujdaryy Court of our Zillah. The copy was compared with the original in my presence; but I did not compare it. I took Purtab Narayn before Mr. Hayes and delivered the Purwanuh to him with my return on the back. I received an order from Mr. Hayes for Purtab Narayn's punishment. Mr. Hayes said, "Purtab Narayn is a man of a notoriously riotous character, and on the complaint of Ram Gatty, he has been ordered to attend (be in hoozoor). That he had entered into recognizances which he had broken, and gone into the Mofussil and made further disturbances; and as an example to others he should receive twenty rattans." Nothing passed while the punishment was inflicting. The rope did not break down nor any thing of that kind. It was my duty to count the stripes: I did so, and nothing particular happened from beginning to end. I have seen punishment inflicted on others, and this was in the same manner, Purtab Narayn was quite well before the punishment was inflicted, he was a stout (or lusty) man. After the cords were removed he walked along on his own feet without the assistance of any body, and two Chupprassies followed him. As far as my eyes followed him, he did not need any help. He did not become senseless during the punishment; and I must have seen it if any such thing had taken place. The punishment took place on the South side of the Cutcherry which is most open. Punishment is inflicted on both sides (South and North), sometimes the one, sometimes the other. I did not accompany Purtab Narayn to the jail, and I did not see him from the day he was punished till his death, which was on the 5th day after; or on the 20th of Srabun. Radakant his Mookhtear, first told me of his death: I asked him what was the cause of it and he said he had died of the Cholera Morbus. (Hyzah.) The Dorogah of the jail sent a Burkundaus to me, about 8 o'clock in the morning. I then went immediately to the jail. It is a part of my duty to investigate the circumstances. I went to the Hospital and found there the Soobadar, the Doctor (Kavaram), and Rungat Singh the Havildar. I did not go to the jail, the hospital and jail are near each other. I saw the body upon a Kutolah in the Verandah of the Hospital. The bed on which he had been lying was quite filthy; there was a sheet over it. From the appearance I thought he might have died of the Cholera Morbus, I have

seen others who had died of it in the same state. The bedding on which he lay, and the clothes he had on were all covered with filth. There was something like froth about his face, which had dried on it and which I thought he might have thrown up. I saw his back, he was lying on his back and in order to inspect it we turned him over while we were taking the examination. There were black long marks of the rattan on his back, such as a person who has been beaten; just the same scars as I have known sores of that description leave when healed. When I first saw the body it was covered and the sheet was full of filth; but there were no stains of blood or such as external sores could have caused. From what Radakant told me and I myself saw, I thought his death was caused by the Cholera Morbus. Ram Dyal Soobuddar was there, Kanoram the Bengalee Doctor, Khaleel the Havildar, Kasinath Singh, Ram Soondur the Mohurrir, Sepahees and other persons belonging to the hospital were present, at this time (when they made the examination) I don't know Gopee Naut Doss, Purtab Narayn's Nephew, but I saw the man of that name examined here to-day. I did not see him there. I know Rada Kant; but do not know whether he was present or not. Kanoram attends the Jail and the Prisoners who are sick; It is his duty to be daily in attendance. Radakant applied to Mr. Hayes in the Cutcherry, in my presence, for leave to burn the body. He said "Purtab Narayn is dead; and we want to burn his body." Mr. Hayes replied, "Well, take it and burn it." I heard of no other application; Radakant having given his order, went away. When a person dies in Jail the corpse is taken to the hospital and examined: if a Hindoo the Hindoos take it away and burn it; and if a Moosulman, the Mahometans bury it, if there be no application from Friends. If Friends apply for the body they are allowed to take it away, and do it. After Mr. Hayes had given Radakant permission to burn the body, I went to examine it. I heard of no order being given to remove the body from the Hospital. (Here the Purwanuh was produced to Witness and he swore this to be the true Original). This is the original Gurjtar Purwanuh, (qu? Warrant to arrest?) My return is upon it. I know Seebouauth Bose; and I know of a complaint made by him against Purtab Narayn for a disturbance after Mr. Hayes's return. Seebouauth put written application into my hand, saying Purtab Narayn has gone into the Mofussil again, and is making a disturbance.

Cross-examined by Mr. Money.

I have nothing but my wages in my present situation; Mr. Hayes appointed me to the office of Nazir; I was formerly Jumedar.

Q. And has not Mr. Hayes in his power to dismiss you from your situation?

A. He may dismiss me if I commit any fault. I was in the Cutcherry when Purtab Narayn was brought in; the punishment was inflicted on him about two hours and a half after. After I had produced Purtab Narayn to Mr. Hayes, he ordered me to take all the people belonging to Zammeendares on the South side of the Cutcherry and take Purtab Narayn there also, this was about half an hour after Mr. Hayes was holding a Court and causes were pending before him. There were no proceedings about Purtab Narayn. He was asked why he had been absent without permission? to which he made no answer. I then took him to the South side of the Cutcherry, nothing more passed than I have said.

I never go to the Jail but upon the death of any prisoner and don't see the Prisoner frequently. The words used by Radakant when he applied for the body were: "Purtab Narayn died last night, and we want to burn him." He did not say he wished to take him to his family. It I don't know who provided the wood with which he was burnt, nor who burnt him.

Q. What is the nature of the Purwanuh on which Purtab Narayn was seized?

A. There is nothing in it but a direction to enquire and report; it says nothing about arresting his person. I believe the seal on the Purwanuh to be that of our Court.

THOMAS ALSOP, ESQUIRE, JUSTICE OF THE PEACE.

Examined by the Advocate General.

I am a Magistrate of Calcutta. It has frequently fallen to my lot to inflict the punishment of the rattan. I have power to do it only in conjunction with another Magistrate. The utmost number allowed by law is 50 strokes, and I have inflicted that number often. The persons who suffer it are always exhibited to me again; and I have never seen nor heard of any inconvenience arising from it, except the pain at the time, the back becoming a little swollen, or the marks of the rattan, what is called warts, appearing. Sometimes I do not perceive any marks at all till next day.—I should not apprehend any danger from twenty strokes of the rattan inflicted in the usual way; I never heard of any. The rattan used is a piece of common cane (here a muster was exhibited to the witness.) Yes, a thing of that kind.

Cross-Examined by Mr. Ferguson.

Q. Do you enter into any investigation of the case before you order the punishment of the rattan.

A. Always.

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Q. Do you examine witnesses on oath before you inflict such a punishment?

A. Always.

Q. In what cases can you inflict the punishment of the rattan?

A. There are only two cases in which we can inflict the punishment of the rattan: one when stolen goods are detected in the possession of the offender; the other when it is a notorious evil-doer convicted of robbing in the bazaars.

Q. A rattan of this description (exhibiting the muster) would cut rather deeply?

A. I should think so: I cannot speak from experience since the time I was at school (*a smile*).

Q. Do you think it would make a large wound?

A. I never saw a Criminal's back laid open with a rattan.

Q. What kind of a one do you use?

A. The Executioner selects the rattan himself.

Q. Does he hold a variety in his hand, and use one or another according to the degree of severity with which the punishment is required to be inflicted?

A. No; he has no more than one.

Q. Don't you think that a person who was, like yourself, not injured to such harsh treatment, being beaten with an instrument of this kind, and the wounds produced left for three days to fester without any dressing in a warm climate in the month of July, about the hottest in the year, don't you think that this might have had the effect of causing death?

A. I do not think myself competent to answer the question: it seems a fitter question for a surgeon: I cannot even speak to the probability of it.

RAM DYAL SINGH.—*Examined by Mr. Fergusson.*

I am Soobadar in the Provincial Battalion; I was on duty at Coomillah in July and August last. I had known Purtaub Narayn for a period of about six years; I was stationed within a stone's throw of his dwelling house. I understood he was punished at the Court, but I was not present. He came to the jail about the 16th of Srabun about 3 o'clock in the afternoon; I saw him in the jail; he was accompanied by two Chupprassies. At about 5 o'clock in the afternoon of that day I saw Kanoram the Doctor there. He made an application of Medicine to the marks that were on his back. I saw his back, it was swollen a little, and there were red marks on it, like what I have seen produced in a similar manner. I have seen many; and his was like others who have suffered the same punishment. From what I saw, the punishment must have been inflicted in the usual manner. (*He here pointed the part of the back which was marked, much the same as the witnessess for the Prosecution.*) He was struck where people usually are. I saw Kanoram the Doctor coming out of the jail, and next morning I saw him again; I saw Purtaub Narayn outside the jail, in the plain, for some purpose. About 9 o'clock next morning, Gopee his nephew and two servants came about an hour earlier than the next, and brought him something to eat. Gopee told me they had brought some victuals for him, and I said, mention it to the Darogah and the centinel. I saw Purtaub Narayn eat his victuals. I saw Radakant there and Gopee the nephew; on the 3d day I saw him outside the jail in the same manner. I did not see him eat that day. He appeared then in good condition; he was going about like other people; I saw his back that day. It was well; the sores had healed up. I know Bulides Singh, he came to me on the third day and used to come to me always, I used to see Radakant and Gopeenat every day outside the jail and assisted them as they gave Purtaub his victuals. I know of no person having been prevented from seeing him outside. I was on duty and the Havildar came and informed me of his death, he used to bathe in a place within the enclosure of the jail. Rangeet Singh told me of his death in the guard-room near the jail, I sent for Kanoram the Doctor, who came, and I and he and the Darogah went in together. I found his bed was full of filth and that his clothes were in the same state and I then came away. I think he died of the Cholera Morbus (*Fyzah*). He was lying on a mattress on the ground, he was lying on his face; there was filth about him and the appearance of vomiting. He was in the same place he had been for the three days preceding. I afterwards saw the corpse outside the Hospital in the compound. When first went there was nobody there; the Doctor and others came afterwards. I was there when the *Soorut Hal* was made up. I observed his back and there was no appearance of any thing that could have caused his death. I have no doubt but he died of the Cholera Morbus. Purtaub Narayn's relations came to the hospital after the writing of the *Soorut Hal* was finished. I saw the body removed for the purpose of being burnt; I did not accompany it. Radakant and Gopee, my sepoys and 3 convicts and some servants went. Two Prisoners went to cut the wood. It is usual for the sepoys to go to take care of the convicts that they do not run away, and they went for that purpose.

Cross-examined by Mr. Money.

I am in the Provincial Corps, under Captain George, stationed at Chittagong. I was on duty at the jail during the three days Purtaub Narayn was in it. I had my guard there. Purtaub Narayn was carried

to the hospital on the same bed on which he had been lying, and was carried to the place of burning in the same filthy state. Gopee and Radakant provided the wood for the pile, and the Convicts only cut it. The wood was, I suppose, brought from the bazaar. The bedding was not in any manner fixed to the bed; so that the dirty clothes might have been removed, but they were not. The bedstead had a bottom (substratum) of its own distinct from the bedding. I have seen persons carried to the river in their dirty clothes, and there put by their friends upon a clean bed.

KANORAM, THE NATIVE DOCTOR.—*Examined by the Advocate General.*

I am in the service of Government, and have been so 20 years. It is my duty to attend the Jail, which I visit regularly twice a day—once in the morning and again in the dusk of the evening; I have too assistants under me, and when I am unable, they attend for me. I knew the late Purtaub Narayn, recollect his having been punished, I did not see the punishment inflicted. The Doctor attends on such occasions if ordered by the Judge; but it is not usual for the Doctor to be present. He is sometimes required to examine if the person is fit for punishment. I was at the jail on that day. Purtaub Narayn's back was red and swollen. I have seen persons punished with 20 strokes of the rattan, and his back was not in a worse state than others usually are. I applied sugar of lead lotion to the place the first day: he was sitting up and spoke to me and seemed hearty. Next morning I visited him again, the swelling had subsided a little. He lay on a bed spread on the floor. I examined his back, it was getting better. I washed the parts with more sugar of lead lotion. I saw him again in the evening, he was then somewhat better than he had been in the morning. He was sitting up and walking about and said he felt himself better. I saw him again next morning and the swelling had entirely disappeared: his sores had dried (healed) up; and he said he was quite well. I saw him again in the evening and found him well and I again applied a little more of the lotion.

Q. Did you apply any thing else?

A. (*After a pause*) I applied some oil: the wounds were healed then. I saw him twice a day all the time he was confined. I heard of his death on the 3d of August. I then went and examined the body; there was a great quantity of filth that he had evacuated downwards and also what he had voided upwards. I believe he had died of the Cholera Morbus. I did not think his death had been caused by the beating. I was at the hospital during the examination of the body and making up of the *Soorut Hal*. Kaleen, the Darogah, was there, Ram Dyal the Soobadar, Kassinant the Mohurrir, the Nazir and the Moonshee (or writer) Ram Soondur; who took down the writing. I have known cases in which Mr. Hayes has remitted the punishment on my representation that the person was not capable of undergoing it. Purtaub Narayn was strong and hearty in the jail.

Cross-examined by Mr. Money.

Q. How are you appointed to your situation of Doctor.

A. The Judge makes a Report of the different candidates for the situation to the Sudder, which appoints the Doctor according to his recommendation: the same is the case with their dismissal. The body was not in a bedstead, and there are none in the jail. He was carried out on the same bed he lay on, and put on a bedstead on reaching the hospital. Was on no bedstead till then. I arrived at the hospital before the writing began. Thee Soorut Hal are signed by the persons present, and put up with the records of the Zillah. But I don't know if this was. I understand it is in Calcutta. The Europe Doctor was not present, and never is present on such occasions.

The ADVOCATE-GENERAL here observed that the Judge could not of himself discharge persons who have above 10 Rupees a month salary; to which it was replied that he had nevertheless powerful influence in getting them appointed or removed.

MAHOMED KALEEL.—*Examined by the Advocate General.*

I am Doregah of the jail of Coomillah, was so in Srabun last, I knew Purtaub Narayn; remember his being brought to the jail by two Burkundaussees, they following him, he walking on his own feet. Shunshur and Kallee Singh were the Burkundaussees who delivered him to me. I saw his back, it was swollen a little. I have seen other persons who have received 20 blows of the rattan; and his back was in the same state as I have seen those of others. I know Kanoram the Doctor. It is his duty to attend the jail twice a day. I saw him there that day at 5 o'clock in the evening applying medicine to the back of Purtaub Narayn. He was in a good state of health, a stout man about 40 years of age and seemed in good health. It is usual for the Prisoners to be allowed to go out of the jail to eat their victuals. His servant, brought him victuals ready cooked about 8 o'clock in the morning and he came out and ate them; he ate sometimes inside and sometimes outside. I saw Gopee Naut and Radakant come two or three days, besides his menial servants. Such a man as Purtaub Narayn could not remain 3 days in jail and we not know it. I never saw him in such a state as to be a whole day without getting up; and I saw him twice or thrice a day. I had no particular order from Mr. Hayes about this man either directly or otherwise. I treated him like the other prisoners. After I had

heard of his death, I went and found him lying with his face to the mat; and saw filth on his bed and what he had vomited. I believe him to have died of the Cholera Morbus. I saw his back the day before his death. It was black and a crust had formed on some parts of it. Four Prisoners carried him out and placed him before the hospital on a bed which was placed upon a cot. I sent for the Nazir and the rest, and the body was carefully examined and the seals of it taken down in writing. Ram Soondur the Bengalee Mohurrir, and Kossinaut the Persian Mohurrir, the Nazir, the Soobadar, and the Doctor were present at this examination. The brethren of the deceased then came and took away the corpse. The body was laid on the back from the jail to the hospital and there turned over to be examined. I still remained of the same opinion as before that that he died of the Cholera Morbus.

Cross-examined by Mr. Fergusson.

Q. Where is that Soorut Hal of which you speak?

A. Mr. Hayes has got it, I believe.

Q. Did you not report in that paper (*here the Soorut Hal was produced*) that Purtaub Narayen was flogged alive from the Jail to the Hospital and remained there one day and then died?

A. No; I reported that he had died in the jail.

Q. It is written here that you reported that Purtaub Narayen died in the hospital after he had been there one day ill—Did you report this?

A. No; I did not report so; it must have been a mistake.

Mr. FERGUSON here read some extracts from the Soorut Hal, which in order to make the examination intelligible to our readers we insert at length.

THE SOORUT HAL.

Report of Mahomed Khubel, Daroga of the Jail of Zillah Tipperah.

Mahomed Annaes, Duffadar of the jail, informed me this day that Purtaub Narayen Prisoner had died, on hearing which I repaired immediately to the body of the deceased, accompanied by Mirza Ausroff Beg, the Acting Foundary Nazir, Ramdoyal Soobadar, Rangit Sing Havildar, Canooran Doctor, and Cossinath Sen Mohurrir, and instituted an enquiry, when it appeared that the said Prisoner was charged with a violent affray and so forth, by Ramgatty Plaintiff, and placed in confinement in the Jail for further Examination, on the 30th July 1821, and that he went to hospital on the 2d of August 1821, being ill with Cholera Morbus, where he remained ill one day and died this day Friday the 4th of the said month, corresponding with the 20th of Sawan 1828, Bengal shun, by the visitation of God. The description of the deceased is as follows: Wheats Colour, middling Height, Lean, broad Forehead, prominent Nose, disjointed Eyebrows, black and white Whiskers and Beard, aged forty six years or thereabouts, Inhabitant of Santa Sity in Pergunnah Bulla, under Soda Thana, son of Sitaram Shao, of the shahoor Cast, date as above.

Written by RAMSOONDER DOSS,

Acting Mohurrir of the Jail of Tipperah.

Witness re-examined by the Advocate General.

If such a thing was written in the Report, it must have been the fault of the Mohurrir; Ram Soondur wrote the Soorut Hal. I did not sign it; because I cannot write.

Mr. FERGUSON held (as we understood) that the Report was the proper legal evidence of what took place at the Inquest held on the body; and that there was no other to be had.

The ADVOCATE GENERAL maintained that a person's living evidence was preferable to any written Report; and illustrated his opinion, by referring to surveys of vessels, &c.

Sir FRANCIS MACNAGHTEN also made some observations on the subject, but what it was we cannot take upon ourselves to say.

MAHOMED ANEES.—Examined by the Advocate General.

I am Duffadar of the jail of Tipperah and attend the convicts in making and repairing the roads. I saw Purtaub Narayen in the jail the day he was imprisoned. Saw Kanooran the Doctor there that day putting some wash over Purtaub's back: it was like that of other people who have been beaten in the same manner. I saw him go about and draw water from the well and pour it over his body, his back was not in such a state as to occasion death.

KENOOL SING.—Examined by the Advocate General.

I am a Jumedar, remember Purtaub Narayen's punishment. I saw the 20 blows inflicted at the Cutcherry with the same kind of rattan commonly used, it was done continuously; no interruption took place. (Same account of his being in the jail &c. as the other witnesses) I heard of his death on the morning after he died, I saw the bed (describes the appearance) and believe he died of the Cholera Morbus. The Darogah gave the order for removing the body.

Cross-Examined by Mr. Fergusson.

Ram Soondur wrote down what took place at the examination.

Q. Your name is used in the Soorut Hal.

A. I cannot write and was not a witness to it. I did not hear it read, and did not examine the body at all. It was not my business, and I went away to my quarters and did not wait. My duty is to inspect

the people making the roads; I was appointed 6 years ago, and get 10 rupees a month.

Q. Don't you think that if you were to give evidence against Mr. Hayes the Judge, you would be nothing the better for it?

A. I don't know any thing about giving evidence on the one side or the other.

Q. Mr. Hayes might dismiss you from your situation, might he not?

A. Not unless I commit a fault.

Q. You mean he ought not? And I do not think he will.

BUDRUDDIN SAH (or MUDDOO DEEN) Burkunduze, and SHUMPER, and KALEK SINGH, the two Burkunduzes who took the deceased to the jail after his punishment, gave the same account as the other exemplary witnesses. Their knowledge extended only till the period of his entering the Jali.

SHAIK SADOOLO.—Examined by the Advocate General.

Q. What are you, Shaik?

A. Korabdar, (the Whip-beater or Executioner.)

Q. How long have you been a Public Functionary?

A. About 25 or 26 years.

Q. Did you exercise the duties of your office on Purtaub Narayen Doss?

A. I did. I laid it (the rattan) upon him. It was done with one like this (*the master was produced*). I laid it on in the usual way with the usual effects; the blows were given consecutively or without any interruption; and a person counted them.

Doctor ALEXANDER HALLIDAY.—Examined by the Advocate General.

Q. Have you seen punishment inflicted with the rattan,

A. Yes, many times.

Q. Do you think the punishment inflicted in the common way likely to be attended with danger?

A. Certainly not.

Q. Do you think it capable of occasioning death?

A. Certainly not.

Q. You have heard what the Native Doctor said was the proper application for such a case?

A. Yes. Sugar of lead was the proper application, and with this treatment it will usually be relieved in two or three days.

(Question from the Bench.)

Supposing the punishment to have been ever so severe, was it capable of producing death at all?

A. Not in so short a time; and in ordinary circumstances not at all.

Q. Could not a mortification have taken place?

A. Yes; but not arrive at maturity.

Cross-examined by Mr. Fergusson.

Q. Might a man after such a punishment not die of Fever?

A. He might.

Q. But you think it an improbability?

A. A very great improbability; but only not a physical impossibility.

Q. If he had been in a weak state, had his back cut open, and the wound entirely neglected for 3 or 4 days in a warm climate, in the month of July, and you were not aware of any other cause, would not you attribute his death to that?

A. Yes, if I knew no other.

BULDEO SINGH.—Examined by the Advocate General.

I am in the service of Gugwader, a Talookdar; and also hold land of myself, and am independent of Mr. Hayes. Knew Purtaub Narayen, and saw him punished; and have seen other persons punished in the same way as he was. All the twenty rattans were inflicted in the usual way without interruption, and he afterwards walked to the jail, the Chinapresses following; he was apparently in good health.

Cross-examined by Mr. Money.

I was at the Cutcherry that day because I have a Talook in the district, and I had business there.

Re-examined by the Advocate General.

I happened to pass the Jail on the third day after he was punished and I saw him; the swelling was fallen and he seemed in good health.

MAHOMED NUSSEF OAD-DEEN.—Examined by the Advocate General.

I am a Mookhtear of Mirza Mahomed Zumeendar. I knew Purtaub Narayen Sahoo, saw him punished with the rattan; the blows were all inflicted consecutively. He then walked along to the jail and appeared in a good state of health; the punishment was inflicted in the ordinary way.

RAM SOONDER SING.—Examined by the Advocate General.

I am Mookhtear to Banoo Beebee Chowdhurree Zumeendar, knew Purtaub Narayen, remember his being punished at Coomillah; he received 20 blows of the rattan, consecutively, without any interruption, in the usual way and then walked to jail.

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SEEBURSAUD BUFARE.—Examined by the Advocate General.

I am a lender of money, and have no connection with Mr. Hayes. I saw Partab Narayen punished with the rattan in the ordinary way; he received 36 blows consecutively—did not faint—and then walked to the jail.

SPEECH OF COUNSEL IN REPLY.

Mr. FERGUSSON rose to say a very few words in reply. The witness for the defence have certainly sworn in direct contradiction to the witnesses for the prosecution in several material points; but the truth or falsehood of these facts is a matter that depends entirely on the comparative credibility of the witnesses. But admitting even all that has been sworn to by the witnesses on the other side one thing is sufficiently clear that Purtab Narayen Doss, a man holding a respectable rank in society, was seized, and for a trivial offence, was, by the order of Mr. Hayes, subjected unlawfully to a cruel and ignominious punishment (such as is inflicted only on felons), and afterwards thrown into jail, and then and there, three days after, he miserably died. That is sufficiently established to be beyond all question. True, if you believe all that has been sworn on the other side, you will doubt of his death having been caused by this punishment; but I think the witnesses on the one side fully as credible as those on the other side at least. The last witness (which were indeed the only witnesses, the rest all filling dependent situations) they only swore to the first part of the case, what took place at the infliction of the punishment. So that it still depends entirely on your opinion of the credibility of these other witnesses (all dependent as I have said), whether you believe that the man died in consequence of that punishment or not. If he had died of the Cholera Morbus, as pretended, you must be aware from what you know of that disease, that this could not have taken place in the jail without his fellow-prisoners (who were numerous) knowing it, but it does not appear that they or any body else knew when he died, or where are they? They are not produced. Mr. Halliday says, that if a person were to die, after having been subjected to such treatment, and he knew of no other cause to which he could ascribe his death, he would ascribe it to the effects of that treatment; you are reduced I fear to that predicament. His fellow-prisoners must assuredly have known when he died, had he died of the Cholera Morbus, as all of you must know, who have the least idea of that dreadful disease; if then there was nothing to attract the attention of his fellow-prisoners, and he quietly breathed his last unnoticed by those beside him what are we to conclude? Not one of those in jail during the night on which he died, and there were a great number, about 20 or 30 persons, seemed to have the least knowledge of his death; it is quite impossible but if he had died of the Cholera Morbus some one or other must have known of it; some one must have sent notice of it to the Darogah; but not one of these persons is called, nor is it pretended that the Darogah had any intelligence during the night of his being labouring under that dreadful disease, of medical aid being called in, or any means taken, in consequence, to preserve his life. It therefore seems evident that he must have departed quietly; which was more probable to be the case if he died in consequence of his wounds. But Ram Soon-dur, the writer of that Paper (the *Soorat Hal*), would have told you he did not die in the jail at all; but in the hospital, after his being removed from the jail. It is stated in that paper (of which Ram Soon-dur is the writer) that he lived two days after being removed to the hospital: this part of the story has now been given up, which is a plain contradiction in the defence, and must throw the strongest suspicion on the whole of their evidence. But I leave the case, Gentlemen, in your hands: it is for you to say, taking a view of the whole case, whether he died in consequence of the beating, the imprisonment, and the treatment he received, or not. If only the half of what has been sworn to be true, it is a most flagrant case. This man who had been tenderly educated according to his rank in life was unlawfully subjected to a severe and disgraceful punishment, and then thrown into jail, where by himself, without attendance of any kind, he miserably died. If you do believe the evidence set up for the defendant, you will of course acquit him of the murder; but if you credit the witnesses for the prosecution, it will be your disagreeable duty to pronounce a verdict of Guilty. As there will be no law point started, the only question for you to decide upon is if the man died in consequence of the wounds inflicted upon him or not.

The ADVOCATE GENERAL said that he thought he had a right urge in defence a point of law arising out of the judicial character of his client. However, he did not think it necessary to insist upon it, at present; but he would reserve to him the benefit of it. This point of law, we are informed, is: "That a Judge acting *bond fide* as such, and not merely under the color of the authority with which he is invested, and having jurisdiction over the subject matter, although he may be wrong in a particular exercise of his power, is not liable to any civil or criminal proceeding for the same."

Mr. FERGUSSON transacted such a doctrine never would be laid down even by the highest law authority in India, that a person could

shield himself by his judicial character from punishment for acts not of a judicial character, and for which he would be punishable as a man.

CHARGE FROM THE BENCH.

SIR FRANCIS MACNAUGHTEN commenced his charge to the Jury by some observations on the great length of the case, which must necessarily, he said, have proved a severe trial to their patience, and disqualified them from giving attention to that which might possibly be expected from him. He offered to read over the Evidence (which he said he had taken down pretty accurately) if he thought it could contribute to their determination—Here the Jury seemed to intimate that it was not necessary, and Sir Francis declared himself well pleased with their opinion, as the Evidence could not be read in less than three hours. —He begged, however, to have it understood, that he had no wish to evade the task; but wearied and exhausted as they must be, he was glad to find that he could relieve them from any additional labour—He then said he should confine himself to such general observations as he conceived would throw a true light upon the question—He said if the Counsel for the Prosecution had not entered into a reply, that he (SIR FRANCIS) would have thought a very few words quite sufficient for the occasion—He should have thought it quite enough to ask them, if it was proved to their satisfaction that Partab Narayen had died in consequence of the punishment which Mr. Hayes had ordered to be inflicted? and he would have felt confident that (leaving a merciful consideration out of the question) they never could have come to any such conclusion.

The Counsel for the Prosecution has told you, that there are few points in the case, and in this I agree. You are further told that the punishment inflicted on the deceased was illegal: as to that point Mr. Hayes admits that the punishment was inflicted by his orders, and as no Regulation is adduced to justify it, he must be responsible for the consequences—Had Mr. Hayes been prepared to shew by the Regulations of Government (which being sanctioned by Parliament have the full force of Law,) that he was authorised to inflict such a punishment in the manner and under the circumstances this was inflicted, it would have been sufficient to exculpate him, even if death had ensued from it. In that case he would not have had to defend himself against this charge, but he would have stood upon authority which ought to have protected him from the form of a Trial. I am no advocate for such punishments—I wish they were, or rather I wish they could be, altogether abolished. We must recollect that in this case there is a total absence of motive: we are called upon to believe that Mr. Hayes, not actuated by any motive even to be guessed at or suspected, was influenced by cruelty alone, and proceeded in the most persevering malice until death had relieved the object of it from his most remorseless persecution. We might at least have expected to hear something of his general character for inhumanity, if there be no ground upon which this particular instance of it is to be placed. As this case now stands before us, it must be admitted that there is not any regulation to justify the punishment which was ordered by Mr. Hayes; but we must remember that he was responsible for the peace and good order of a district; and we ought to make reasonable allowances for acts which may have been done with good intentions.

We are not to presume a thing is wrong because it was done without the express sanction of a Regulation—The act may have been proper or necessary, and yet the case unprovided for by the Regulations—This Gentleman may, at his own risk, have thought proper to take on himself the responsibility of protecting the helpless, by checking a degree of turbulence and oppression which was aiming at riot and outrage. He may have acted most beneficially for the public, by going beyond the extent to which he was permitted by the Regulations to proceed; yet he has exposed himself to this prosecution by having acted in a manner which the law does not justify. I shall now take the liberty of telling you, although there was no doubt a very high responsibility for the preservation of the peace cast upon Mr. Hayes, that I do not mean to justify any excess of authority; that I think it but fair to try him (and perhaps it is rigorous enough to do so) as a person who has exceeded his authority, and brought himself, by having done so, into this situation. If he has, to put it in the strongest terms, which I have no objection to adopt from the Counsel for this prosecution, abused his authority and violated the law, by acting beyond the power with which he was strictly invested, and if he is not to derive any benefit from the situation in which he was placed, let him at least be put upon the same footing with a man who could not have had any pretext for the commission of such an offence, and who could not possibly have thought it right, as Mr. Hayes may have done. Some allowance may perhaps fairly be expected by a Magistrate who has not had bad motives imputed to him, who may have been obstructed in the execution of his office, and thwarted or provoked into impatience by a wrong-headed and troublesome man. The most we can do, is to cast off entirely from him the character of a Magistrate, and to judge him as we would judge an ordinary individual, taking his Trial for Murder. His Magistracy can have nothing to do with his

guilt; it is not considered in extenuation; it will therefore (I repeat it) be quite rigorous enough to try him, stripped of the protection of his Commission of the Peace. He has not shewn by the Regulations that he was authorised to inflict the punishment of which Pertaub Narayn is alleged to have died, and lie now stands in the same situation as he would have stood in, if he had not been a Magistrate at all.

He is on his Trial for Murder, and the first thing to be considered is, did Pertaub Narayn die in consequence of the punishment he suffered by order of Mr. Hayes? He is answerable for what he orders to be done by others, as he would have been had he done it with his own hands—did Pertaub Narayn die in consequence of having received 20 strokes with a rattan? which it cannot be doubted Mr. Hayes ordered to be inflicted. We have his order in Evidence, as well as by admission; but with whatever degree of violence or illegality a man may act towards another, he is not a murderer if it does not appear that death was the consequence of that violence. Whatever may have been his motives, or however you may disapprove of his conduct, you cannot advance a step towards his conviction until it is proved to your satisfaction that he caused the death of the deceased. Mr. Fergusson has said, and said truly, that your judgement in this case must entirely depend upon the credit which you may give the witnesses on either side. Never, surely, was there more opposite swearing than we have heard here to day. One set of swearers say positively that Pertaub Narayn died of the Cholera Morbus; and if what they say of appearances after death be true I think it must be concluded that he died of that disease. But the other set say as positively for the prosecution, that he did not die of the Cholera Morbus, and if what they state as to appearances be believed, you cannot give credit to the witnesses for the defence, inasmuch as those for the prosecution positively deny the facts from which we were left to infer that the death of Pertaub Narayn was occasioned by Cholera. It depends then wholly upon the credit which you may be inclined to give to the different, and in all respects, opposite sets of witnesses, and of that credit it is your particular province to judge.

It is melancholy, but it often happens in this Court, that we are obliged to cast off from our consideration all the mere swearing of both sides, and decide upon circumstances which are less likely to deceive us. It is said that most of the witnesses for the defence are in the employ of Mr. Hayes. There is no doubt but he may be supposed to have some influence over them—but several of them appear to be in the public service, and as you have heard, not appointed by Mr. Hayes.—The observation will not apply in any sense to the Havildar, nor could he have been influenced by Mr. Hayes in any manner that we can conjecture. There were three others, totally unconnected with Mr. Hayes, who happened, providentially as I think, to have been at the Cutcherry upon their own business on the day that Pertaub Narayn was punished.—Suspicions may I admit arise as to the veracity of Witnesses who seem to have an interest in swearing falsely—But is their testimony to be wholly rejected? or are we not to receive it, subject no doubt to all the observations to which it lies open?—If we lay it down that a man is necessarily to be disbelieved because he is in the service of, or some way depending on, another, the consequences of such a doctrine will be frightful. Most men in the Mofussil are without the possibility of obtaining any evidence except such as to be had from their servants or dependents. Reject them, and what follows? Any man must be convicted of any crime which malice can lay to his charge. He might as well be condemned at once without the formality of a Trial.—What safety would any Gentleman in the Civil Service, any Indigo Planter, or Merchant or, others in the Mofussil have, should conspiracies be formed against his life or his character, if it were laid down that the only Witnesses he could possibly call in extenuation, were assumed to be unworthy of credit? A man in many instances may not possibly be able to produce evidence, but such as would be disqualified by such a doctrine as this. Most of the Witnesses in this defence might have considered Mr. Hayes as their master and protector; but there are others, and if we may judge from their manner and appearance not the least credible in the case, that stand perfectly clear of any such objection.

A degree of suspicion will be excited against every witness whom we can suppose to have a biased mind. He will be the more minutely examined, and it will be for the Jury to decide from their observation of his demeanor, and a comparison of what he swears with the circumstances of the Case, to decide upon the credit which he ought to obtain. He may swear truly, and he is not to be implicitly disbelieved. It would be as well for men to come into this Court and plead Guilty to any charge as to enter into the farce of a defence, for it can be no better than a farce, if his Witnesses are to be rejected, or, which is the same thing, disbelieved. Under such a system he must be convicted, and it would be as well to plead Guilty at once. But are there not abundant reasons why you should give credit to the Witnesses for the defence, rather than to those for the prosecution? The Witnesses for the prosecution have in my mind sunk themselves into a

depth beyond the reach of credibility. As to the Witnesses for the defence, did the Counsel for the prosecution treat them in cross examination as if they were not entitled to credit for all they swore? There was nothing brought forward or even insinuated against them except that they were in the service of, or depending upon, Mr. Hayes.—From my experience in this country, I can never bring myself to believe that we ought to balance an account as between the number of swearers, but there are three Witnesses for Mr. Hayes who seem to be beyond every sort of exception and the Havildar stands in the same situation. The evidence of all goes to meet and to negative that which has been adduced on the part of the prosecution.

Now I beg of you, Gentlemen, to ask yourselves if you can believe that a person filling Mr. Hayes's high situation could possibly have deliberated a murder. As we have no facts from which such conduct may be presumed to be probable, we ought to have been shewn its possibility at least. Leaving for the present the witnesses to whose disadvantage nothing can be imputed out of the question, is it to be believed that Mr. Hayes could have attempted to influence his Omiah to give false Evidence? Do you believe that a man of common sense would have surrendered his character, his honor, and his life, to the discretion of such people as those? or could it be fancied a security, from the ease which they might be induced to perjure themselves? We must impute to him the most beastly stupidity before we can believe it. It cannot be believed without offering the extremest of violence to every probability.

The case is this: Mr. Hayes ordered Pertaub Narayn to receive 20 stripes with a rattan. Pertaub Narayn died, and Mr. Hayes is therefore his murderer. This is coming to a hasty conclusion. The witnesses for the prosecution swear that Mr. Hayes ordered the stripes to be "well laid on." The witnesses for the defence swear that they were present during the whole of the transaction, that they heard every thing that passed, and that they did not hear any such order. Some of the witnesses for the prosecution swear that this order was given in the verandah. But it would be waste of time to dwell much upon such discrepancies; as the fact is, that not a witness for the prosecution has sworn that the punishment was inflicted otherwise than in the usual manner, and all the witnesses for the defence swear that it was inflicted in the ordinary way; so that if we could believe the order to have been given as a proof of Mr. Hayes's malice, when we come to consider the main question—"Did Pertaub Narayn die of the punishment or not?"—the orders of Mr. Hayes are unimportant, if the punishment was not inflicted with unusual severity—Whether we believed or disbelieved that Mr. Hayes issued the orders imputed to him, we have no reason to think that Pertaub Narayn was punished with unusual severity—He received twenty stripes of the rattan—Did this occasion his death?—You must all have heard of such punishments—perhaps witnessed them, but I am sure you never knew of their having occasioned death, or any thing more than temporary pain—Mr. Aloop has told us that he has ordered Fifty, and that he never apprehended and never knew any fatal or serious consequence—the punishment is abominable, and although it may be necessary, I cannot think of it without disgust.—But is it likely to occasion death? You must all know that it is not.

Of this, the instigators of the prosecution seem to have been well aware; for they thought it necessary to have recourse to another mode of accounting for the death of Pertaub Narayn. They tell us that death was occasioned not by the punishment alone, but by the punishment, and the privations, and ill usage which he afterwards endured. Observe how they proceed: they say that after the first stroke, Pertaub Narayn cried out for mercy; that when he received nine more, the cords with which his hands were tied gave way; that Mr. Hayes who was present ordered him to be tied up again, and that he received the other ten. This was of course intended to have effect. It proved the deliberate determination with which Mr. Hayes proceeded; that there was an opening for repentance *a locis penitenti*, of which he did not avail himself, but that he was determined, senseless and exhausted as this man appeared, to complete his purpose. They then swear that after he had suffered all that was ordered, he was unable to walk, and was dragged by two or three men to the jail. What say the witnesses on the other side? That the punishment was inflicted and suffered in the usual manner; that there was no insensibility, no breaking of cords, no inability to walk, and that the deceased after having been punished walked to the jail without any assistance. This is sworn by apparently unexceptionable Witnesses: Do you believe them? If you do, your belief of that will go very far towards a discredit of the Witnesses for the Prosecution—very far towards convincing you that what they have sworn to as afterwards happening is utterly untrue—if the internal evidence of its falsehood was not sufficiently apparent. They say that the deceased was unable to rise from his bed after he had arrived at the jail until the time of his death—that he had no medical assistance—that his servants were forbidden access to him—that he was deprived of victuals, and denied, or at least could not get, water to drink,—and all this is supposed to have been in consequence of the orders of Mr. Hayes. That he died from his wounds aggravated by ill usage after he had received them—Before we can believe all this, we must suppose Mr. Hayes

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to have been actuated by a degree of malevolence and hatred which never was heard of before. There is no motive related or even hinted at and none which can possibly be conceived. We must believe that Mr. Hayes, without a motive, ordered a punishment of extraordinary severity; that he then sent the object of his vengeance to jail, and there confined him with a degree of rigour which had never been heard of before, denying those necessaries which would have been necessary to him, until he at last produced a death which he must have been known he was to answer for with his own life. Can we believe such a refusal as this? or is it possible that any man should persecute a fellow creature with cruelty so preserving and so relentless? Can we believe that Mr. Hayes, after having crushed out the life of this man by such barbarous treatment, actually refused to his friends the consolation of performing his obsequies? It is impossible; and the prosecutors, as they are desirous of being believed, ought, in compliment to our understandings, to have told us a credible story.

They tell us, that after the man had died, application was made to Mr. Hayes for leave to carry his remains to his friends, in order that the last ceremony might be performed, and that this request was most peremptorily refused. Let us but ask ourselves if it is possible that a man could be so stupidly wicked, give him credit for all the enmity that can exist in the heart of man, and let us suppose ourselves possessed of (that which is totally absent) evidence of a motive on the part of Mr. Hayes, when there was an end of the object of his hatred, do you think it possible that a consciousness of guilt did not arise? Do you think that he would not at such a time have wished to propitiate? and are we really to believe that at such a season he could be desirous of exasperating the family and the friends of a man whom he had murdered?

I feel satisfied, if Mr. Hayes had been conscious of having done wrong at the beginning, that he never would have aggravated the injury. It is needless to refute the rest; for with the dreadful impression of murder on his mind, every man's heart and understanding will assure him that he never could have acted the part with which he has been charged. If he had been cold-blooded and cruel as they wish us to believe, he could not have been entirely free from compunction. But grant that he was self-interested, and every consideration that can actuate man would have dictated an opposite line of conduct.

If you do not believe it ALL, you cannot give any credit to the swearing for the prosecution. The principal facts stand upon better testimony, and they are not to be questioned. Pertaub-Narayn was punished and he died. To connect the death with the punishment is the difficulty which the prosecutors had to surmount, and of this difficulty they seem to have been fully aware. Had they said that the man died of twenty strokes of the rattan, they would at once have been disbelieved, we have in evidence that which was within our own knowledge, that fifty may be inflicted without any apprehension of danger.

There was no way of connecting the death with the punishment but by the treatment in jail. They therefore speak of the privations and neglect which I have mentioned. They say that his servants were refused access to him, that he was denied medical aid, that he could not even procure water to drink, that his back had become putrid, and they describe its appearance in the most sickening terms.

As to the punishment, Doctor Halliday has been examined, and has sworn that he does not think death could have been occasioned by it. I asked him (supposing it possible) whether he thought death could have followed so soon? He answered that he thought not. He is then asked if death might not have followed from extraordinary severity in the punishment, and all the neglect and ill-usage which was alleged to have ensued, and he said that death might be the consequence: who doubts it? But before you can apply his answer, you must believe that which I hold to be incredible. As to that part of the story relating to the cords giving way during the punishment, I can easily see the effect which it was intended to produce. But every witness for the defence who was present and examined gives it the most decided denial. It is a fact of no importance in itself, but as it must have been intended to prejudice, it becomes important in our estimate of the credit to which the witnesses for the prosecution are entitled. If you believe they swore falsely in that, in what are they to be believed?

So far was the deceased from having been left without medical aid that we have had the Native Doctor, who attended him, as a witness for the defence—and is there any reason to disbelieve his testimony? He tells us, it was his duty, which he never omitted, to visit the Jail twice a day, and upon the day of the deceased's punishment that he did visit it as usual. That he saw Pertaub Narayn who did not complain of any thing but the ordinary sensations which are felt after such punishment. That he applied the usual lotion, and that the next day his patient was much relieved. That he saw him morning and evening. That the swelling had entirely subsided, and the wounds healed, and that he did not want for any thing that was proper for him to have.

Several witnesses swear in direct contradiction to those for the prosecution. They tell us that they saw Pertaub Narayn going about, at the place outside of the Jail where the victuals of prisoners are usually dressed and eaten. That they saw him then actually at his meals, and apparently in good health after his punishment. In short if any thing of danger had attended the infliction, that the danger was entirely at an end.

If the case rested here, I might confidently ask you if you could find him guilty? But it does not rest here: Mr. Hayes has undertaken to account for the man's death. And has he not done it? Has he not proved to your satisfaction that death was occasioned by the Cholera Morbus? What reason have you to doubt it? There was the Inquest on the body,* that there always is when a man dies in Jail. Compare the evidence which makes it improbable at least, that he should or could have died of his punishment, with the evidence which you have heard of the actual cause of his death, and to what conclusion can you come? He walked away from the place of punishment? He went to the Jail; he rose; he walked, he ate, he drank, as if nothing had happened which could endanger his life. We may be predisposed to believe that this is the most probable account. And as to the appearances which the Witnesses describe of his bed clothes, they are conclusive (if they are believed) as to the complaint of which he died.

Why the body was not cleansed before it was sent from the Hospital, I cannot say, but I am told that it is not absolutely necessary until it is about to be laid upon the funeral pile, and the proper place for the performance of this ceremony seems to have been the banks of the river to which he was taken to be burned.

The object is to make you believe that Mr. Hayes had carried his vengeance beyond death; and to effect this the Gomastuh of Pertaub Narayn has sworn that he applied for leave to take the corpse to the House of the deceased, and that it was refused—He luckily mentioned the name of a man who was present—That man has appeared here to-day, what does he say? That leave had been asked to burn the corpse, and that it was immediately granted—there was an attempt to make us suppose that Mr. Hayes had provided wood for the funeral pile, and how has it ended? In an absolute denial of the fact—the Havildar, who is out of the range of suspicion, proved at once in his answer to an unexpected question that the wood had been supplied by the Gomastuh, and Gopeenaut the nephew of the deceased, and that the convicts from the Jail had been merely sent to split it.

It is my belief that the deceased could not have lost his life from twenty strokes of a rattan, and that the Witnesses for the defence are in point of credit and freedom from suspicion greatly superior to those for the prosecution: we have our own knowledge and the evidence of Mr. Alsop and Doctor HALLIDAY against this part of the story; but if such a thing had been perfectly new to us and we had nothing to direct our judgement but the swearing of those who were present, I do declare without reserve that I could not hesitate for a moment in believing the witnesses for the defence. I think them beyond all comparison in themselves entitled to the greatest degree of credit.

Now, Gentlemen, these are all the observations with which I shall trouble you: I am sorry, after you had already suffered so much fatigue, to have occupied so much of your time. I should not have thought it necessary to say so much, if the Counsel for the Prosecution had not exercised his privilege of reply. I do not desire you to adopt my opinion; if you think me wrong, it is your duty to control it. I never did and never can wish that a Jury should be guided by my sentiments. I cannot refrain from an expression of them when I feel in my conscience that they are justly favorable to a man upon his Trial: I cannot help it, and it is a duty which I have never omitted. I know the Juries of this place too well to suppose that they will suspect me of arrogance. I have no such apprehension: if I had, I might be more cautious from a fear of injuring the cause, which I trust, I shall ever desire to serve. I have never discovered any thing like dissatisfaction in a Jury at the most express declaration of my opinions; when they cannot be favorable to the party accused, I hope I have always been sufficiently reserved. Upon this occasion I shall conclude by telling you that I do not discover any ground upon which a Verdict of Conviction can rest. As to excess of authority I have already said enough, but as to Guilt connected with the charge of Murder, I most solemnly declare before God, that I cannot dis- cover any but that which is fixed upon the contrivers of this prosecution.

The Jury immediately returned a verdict of NOT GUILTY.

SIR FRANCIS MACNAGHTEN.—MR. HAYES, I congratulate you, not on your acquittal, but upon your having had an opportunity of having your conduct in this transaction publicly investigated and cleared up.

* Vide page 518.

Public Concert.

Mr. and Mrs. Lacy's Last Concert was held at the Town Hall, on Monday Evening, and honored by the presence of the Marquis and Marchioness of Hastings, and a larger audience than we had witnessed at any of the previous Concerts of the Season. We have not room to go much into detail in our Report of it—but we cannot pass it wholly in silence.

The Instrumental Orchestra was only of the usual force, and quite inadequate to do justice to the fine Symphonies of Haydn and Mozart. The Vocal Pieces were therefore the chief attraction of the evening.

The Polacca of PEDRAZZI was sung by Mr. Schmidt, in a pleasing manner, though inferior in effect to some of his earlier efforts.

The fine Duo of GUGLIELMI—"Amore vi chiedo," was executed by Mr. and Mrs. Lacy in a rich and feeling style, and gave evident delight to many.

The Maltese Air had nothing to recommend it, but the luxuriant images of the poetry, which, like many of Moore's Songs, are too warm and glowing for the Airs to which they are set.

Winter's Terzetto—"Mi lasci, o Madre amata," produced a fine harmony of sounds, and the voices were in excellent tone and management; but it was, perhaps, somewhat too grave and scientific to suit the general taste.

The Flute Solo introduced in the First Act, though exhibiting great rapidity of execution, was injudiciously chosen, and less pleasing than it was no doubt intended to be.

Mrs. Lacy's Song from Sir John Stevenson, was less agreeable than either of the former.

The TERZETTO BUFFO—"Ah! ah! ah! ah!" from Puccita, was a master-piece in that style, and executed in the most perfect manner. There was nothing left to desire in this, which appeared to us excellence itself.

The Overture to IDOMENEU, by Mozart, like the Symphony of Haydn, failed only from want of force.

The Recitative and Air of Mayer, by Mrs. Lacy, were sweetly sung.

The Danish Song of Mr. Schmidt was more pleasing than the first that he sang in this language.

Sale's Duet—"Gay being, born to flutter through the day" is a mixture of pedantic foppery and conceit of style, without originality or beauty, and nothing could have made it even pleasing but the rich harmony of Mr. and Mrs. Lacy's voices, which were admirably attuned.

The ECHO SONG of Bishop, by Mrs. Lacy, was the favorite of the evening. It was very sweetly accompanied on the Flute by an Amateur, and appeared to give greater and more general pleasure than any thing that had gone before it.

The Round or Glee, "When the Wind blows," closed the Selection; and "God SAVE THE KING" followed, in full chorus, the audience standing.

Mr. SCHMIDT announces his intention to have a Benefit Concert soon, and we hope he will succeed in uniting all the scattered materials, as the surest way of securing a Full House, and giving general satisfaction.

Bombay.

Bombay, March 27, 1822.—On Sunday His Majesty's Ship LEANDER, Captain P. Blackwood, anchored in the Harbour. His Excellency the Admiral lands this morning under the customary honours.

Marriage.

On the 16th instant, at St. John's Cathedral, by the Reverend Dr. CORRIE, Mr. ROBERT FLEMING, to Miss ANN ELIZA HUNT.

Death.

On the 16th instant, of a liver complaint, at the house of Doctor GEORGE MACCOWAN, Government Place, JOHN MITCHELL SAMSON, aged 22 years, 3 months, and 12 days, Son of DAVID SAMSON, Esq. of Upper Kelton, Dumfries-shire, Scotland. Thus one, whose ardent mind looked forward to a long and an active life, has fallen in the flower of youth, a victim to this fatal climate. Before he could enter upon his career, death has palsied his arm and stifled his warm heart. The small circle of his acquaintance will long cherish his memory with deep regret; and adventurers in foreign climes—whose breasts like his beat high with anticipations of the future—may learn how uncertain are the hopes that hang on the brittle thread of human life.

Musical Novelties.

To the Editor of the India Gazette.

MR. EDITOR,

A friend of mine, who moves in the *boulevard* at home, gives me a few particulars in her last letter received by the *Windsor Castle*, which may be interesting to your musical readers. Writing of the Opera, she says, that the *Pit* has become quite fashionable—that backs have been put to the benches, and that they are now occupied by Duchesses, Countesses, and all the Chivalry of the Town. Madame Campanore, who, you will recollect, resided in England about six years ago and figured away at the Opera, continues a great favorite.

The Philharmonic Concert of last season, had been uncommonly brilliant. One of the stars of the musical constellation was a Mr. Kieswetter, whose solo performance on the violin, and abilities at leading, are described as super-excellent.

His Majesty had not honored the Philharmonic with his presence, and it was currently believed that he had taken offence at the Antient Concert, because a number of persons left the room before his Majesty retired. The Vocal Concerts, Hanover-square, are represented as not being at all in fashion.

Your Constant Reader,

MUSSETTA.

Extraordinary Infant.

To the Editor of the Bombay Gazette.

SIR,

I have just returned from visiting a Sonar in the City of Poornah, whose wife presented him with a male child of very extraordinary formation four days ago. If no other Correspondent sends you a description of it, perhaps the following may not be unacceptable.

The Child had two bodies, which were joined together from the top of the trunk to the umbilicus. One body was strong and perfect in every respect and seemed by the repellent action of its little hands to feel oppressed by the other; the other body had no head or neck, but a tegument of skin covered with a small quantity of hair at the extremity at the trunk. Where the arms should have been, there was a short, and apparently, boneless excrescence.

The trunk seemed perfect down to the middle of the thighs where they had an appearance as if amputated. Each body performed its separate functions. The Child appeared stout and healthy, but on slightly moving it, gave signs of exhaustion or pain. How the food taken by the one body extends its nourishment to the other is a subject of curiosity.

From the way in which the trunks are joined I should imagine the blood vessels of the skin common to both. Both bodies were of a small size.—I remain, Mr. Editor, Yours,

A SUBSCRIBER-Persian Gulph.

To the Editor of the Bombay Gazette.

SIR,

The ship NADREK having been wrecked in consequence of the Longitude of the Island of Zazarine being laid down incorrectly in Norie's and Horshburgh's Charts of the Persian Gulph, I feel it my duty to state the following:

Latitude of Zazarine, 27° 57' N.
Allowing the Longitude of Bushire, 56° 50' E.
Zazarine is West 37 Miles from it, and places the Island } 50° 19' E.
in Longitude,

The Island of Kenn bears S. W. by Compass 14 miles.

Your obedient Servant,

BOMBAY, March 26, 1822. JOHN HAY, late Commander.

Shipping Arrivals.

CALCUTTA.

Date	Names of Vessels	Flags	Commanders	From Whence Left
April 14	Caron	British	T. McCarthy	Bombay Mar. 16
	Lady Flora	British	J. D. Anis	Isle of France

Shipping Departures.

CALCUTTA.

Date	Names of Vessels	Flags	Commanders	Destination
April 15	Ganges	British	W. Chivers	London
	Henry Meriton	British	W. Maxfield	Madras

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